

VOLUME II—Pages 277a-644a

No. 83-95

---

---

# In the Supreme Court of the United States

---

October Term, 1983

---

ERNEST S. PATTON, Superintendent, SCI—CAMP HILL,  
and HARVEY BARTLE, III, Attorney General of the Com-  
monwealth of Pennsylvania,

Petitioners,

v.

JON E. YOUNT,

---

Respondent.

On Writ of Certiorari to the United States Court of Appeals  
for the Third Circuit

---

## JOINT APPENDIX

---

F. CORTEZ BELL, III  
Assistant District Attorney  
of Clearfield County  
P. O. Box 887  
Clearfield, Penna. 16830  
(814) 765-9669  
Counsel for Petitioners

GEORGE E. SCHUMACHER  
Federal Public Defender  
590 Centre City Tower  
650 Smithfield Street  
Pittsburgh, Penna. 15222  
(412) 644-6565  
FTS 722-6565  
Counsel for Respondent

---

---

Murrelle Printing Co., Box 100, Sayre, Pa. 16840—(717) 888-2244

Petition for Certiorari Filed June 29, 1983.  
Certiorari Granted October 17, 1983.

# TABLE OF CONTENTS

---

PAGE

## VOLUME I:

Docket Entries—United States District Court for the Middle District of Pennsylvania .....	1a
Docket Entries—United States District Court for the Western District of Pennsylvania .....	3a
Docket Entries—United States Court of Appeals for the Third Circuit .....	12a

## PROCEEDINGS IN THE COURTS OF PENNSYLVANIA:

### Transcript of Hearing:

Vera K. Krapf:

Voir Dire Examination .....	18a
-----------------------------	-----

Blair Hoover:

Voir Dire Examination .....	29a
-----------------------------	-----

Clair Clapsaddle:

Voir Dire Examination .....	40a
-----------------------------	-----

John Yorke:

Voir Dire Examination .....	53a
-----------------------------	-----

Mary Jane Waple:

Voir Dire Examination .....	66a
-----------------------------	-----

James F. Hrin:

Voir Dire Examination .....	80a
-----------------------------	-----

Martin R. Karetski:

Voir Dire Examination .....	96a
-----------------------------	-----

Julia C. Hummel:

Voir Dire Examination .....	116a
-----------------------------	------



Omar H. Ives:	
Voir Dire Examination .....	136a
Mrs. Jessie M. Parks:	
Voir Dire Examination .....	146a
Albert I. Undercoffer:	
Voir Dire Examination .....	160a
Robert P. Murphy:	
Voir Dire Examination .....	173a
Irene Kurtz:	
Voir Dire Examination .....	189a
John T. Harchak:	
Voir Dire Examination .....	206a
David J. Chincharick:	
Voir Dire Examination .....	229a
LaVerne B. Pyott:	
Voir Dire Examination .....	245a
Memorandum and Order, Sept. 21, 1970 .....	259a
Memorandum and Order, Nov. 14, 1970 .....	262a
Opinion, County Court, Jan. 15, 1973 .....	267a
Order .....	276a
VOLUME II:	
Opinion, Supreme Court of Pennsylvania, Jan. 24, 1974 .....	277a
PROCEEDINGS IN THE FEDERAL COURTS:	
Motion To Proceed in Forma Pauperis .....	295a
Affidavit of Poverty .....	296a
Petition for Writ of Habeas Corpus .....	297a
Answer to Petition for Writ of Habeas Corpus..	310a
Petitioner's Traverse to Respondents' Answer to Petition for Writ of Habeas Corpus .....	336a

Order, April 16, 1981 .....	349a
Amendment to Petition for Writ of Habeas Corpus .....	350a
Answer to Amendment to Petition for Writ of Habeas Corpus .....	359a
Petition To Dismiss Petition for Writ of Habeas Corpus .....	393a
Transcript, Hearing, November 3, 1981, United States District Court, on Petition for Writ of Habeas Corpus: .....	395a
Petitioner's Evidence:	
Homer W. King, Esq.:	
Direct Examination .....	401a
Cross-Examination .....	434a
Redirect Examination .....	449a
Recross-Examination .....	452a
Caroline Yount:	
Direct Examination .....	454a
Cross-Examination .....	464a
Redirect Examination .....	469a
Constance Ives:	
Direct Examination .....	472a
Cross-Examination .....	475a
James V. Wade:	
Direct Examination .....	477a
Jon E. Yount:	
Direct Examination .....	482a
Cross-Examination .....	513a
Redirect Examination .....	514a

**Petitioner's Exhibits:**

P-1-a—Newspaper Article, April 29, 1966 . .	520a
P-1-b—Newspaper Article, April 30, 1966 . .	529a
P-1-d—Newspaper Article, May 3, 1966 . . .	533a
P-1-f—Newspaper Article, September 19, 1966 . . . . .	542a
P-1-g—Newspaper Article, September 26, 1966 . . . . .	544a
P-1-h—Newspaper Article, September 27, 1966 . . . . .	552a
P-1-i—Newspaper Article, September 28, 1966 . . . . .	557a
P-1-j—Newspaper Article, September 29, 1966 . . . . .	565a
P-1-k—Newspaper Article, September 30, 1966 . . . . .	574a
P-1-l—Newspaper Article, October 1, 1966 .	583a
P-1-m—Newspaper Article, October 3, 1966 . . . . .	591a
P-1-n—Newspaper Article, October 4, 1966	598a
P-1-o—Newspaper Article, October 5, 1966	607a
P-1-p—Newspaper Article, October 6, 1966	617a
P-1-q—Newspaper Article, October 7, 1966	623a
P-1-r—Newspaper Article, October 8, 1966	631a
P-1-s—Newspaper Article, October 10, 1966 . . . . .	639a
P-1-t—Newspaper Article, October 11, 1966 . . . . .	640a
P-1-v—Newspaper Article, June 30, 1969 . .	642a
P-1-w—Newspaper Article, July 1, 1969 . . .	643a
P-1-x—Newspaper Article, July 5, 1969 . . .	644a

### VOLUME III:

P-1-y—Newspaper Article, July 10, 1969 . . .	645a
P-1-z—Newspaper Article, Sept. 8, 1969 . . .	646a
P-1-aa—Newspaper Article, Oct. 27, 1969 .	648a
P-1-bb—Newspaper Article, Dec. 6, 1969 . .	649a
P-1-cc—Newspaper Article, Feb. 25, 1970 .	650a
P-1-dd—Newspaper Article, March 9, 1970	651a
P-1-ee—Newspaper Article, May 7, 1970 . . .	652a
P-1-ff—Newspaper Article, May 15, 1970 . .	653a
P-1-gg—Newspaper Article, Sept. 22, 1970 .	654a
P-1-hh—Newspaper Article, Sept. 30, 1970 .	655a
P-1-ii—Newspaper Article, Oct. 7, 1970 . . .	655a
P-1-jj—Newspaper Article, Oct. 27, 1970 . .	656a
P-1-kk—Newspaper Article, Nov. 3, 1970 . .	657a
P-1-ll—Newspaper Article, Nov. 4, 1970 . . .	658a
P-1-mm—Newspaper Article, Nov. 5, 1970 .	658a
P-1-nn—Newspaper Article, Nov. 6, 1970 . .	661a
P-1-oo—Newspaper Article, Nov., 1970 . . . .	662a
P-1-pp—Newspaper Article, Nov., 1970 . . .	663a
P-1-qq—Newspaper Article, Nov. 10, 1970 .	664a
P-1-rr—Newspaper Article, Nov. 12, 1970 .	666a
P-1-ss—Newspaper Article, Nov. 13, 1970 . .	667a
P-1-tt—Newspaper Article, Nov. 14, 1970 . .	667a
P-1-uu—Newspaper Article, Nov. 16, 1970 .	669a
P-1-vv—Newspaper Article, Nov. 17, 1970 .	670a
P-1-ww—Newspaper Article, Nov. 18, 1970	672a
P-1-xx—Newspaper Article, Nov. 19, 1970 .	673a
P-1-yy—Newspaper Article, Nov. 20, 1970 .	674a
P-1-zz—Newspaper Article, Nov., 1970 . . . .	677a

P-1-aaa — Newspaper Article, Nov. 23, 1970	678a
P-1-bbb — Newspaper Article, Dec. 1, 1970	679a
P-1-ccc — Newspaper Article, Oct. 6, 1981	681a
P-1-ddd — Newspaper Article, Oct. 10, 1981	682a
P-1-eee — Newspaper Article	683a
P-1-fff — Newspaper Article	685a
P-1-ggg — Newspaper Article	685a
Plaintiff's Exhibit No. 5 — Newspaper Article, Oct. 6 and 10, 1981	687a
Transcript, Hearing, December 28, 1981, United District Court, Before Robert Mitchell, United States Magistrate:	689a
Respondent's Evidence:	
Hon. John A. Cherry:	
Direct Examination	690a
Cross-Examination	700a
Redirect Examination	710a
Recross-Examination	710a
Hon. John K. Reilly, Jr.:	
Direct Examination	712a
Cross-Examination	719a
Francis V. Sebino, Esq.:	
Direct Examination	722a
Cross-Examination	734a
Redirect Examination	738a
Recross-Examination	739a
Magistrate's Report and Recommendation	744a
Order, February 12, 1982	769a
Respondent's Objections to Magistrate's Report and Recommendation	770a

Amendment to Petition for Writ of Habeas Corpus and Amended Petition for Writ of Habeas Corpus .....	778a
Order, March 31, 1983 .....	781a
Opinion, United States District Court, April 22, 1982 .....	783a
Order, United States District Court, April 22, 1982 .....	809a
Order, April 23, 1982 .....	810a
Motion To Supplement the Record .....	811a
Order, May 21, 1982 .....	828a
Answer to Motion To Supplement the Record ..	829a
Order, June 21, 1982 .....	831a
Notice of Appeal .....	832a
Opinion, United States Court of Appeals for the Third Circuit .....	833a
Judgment, United States Court of Appeals for the Third Circuit .....	892a
Petition for Writ of Certiorari .....	894a
Respondent's Brief in Opposition .....	906a
Order Allowing Certiorari .....	917a

COMONWEALTH OF PENNSYLVANIA,

Appellee,

v.

JON E. YOUNT, Appellant.

---

SUPREME COURT OF PENNSYLVANIA

Jan. 24, 1974.

[455 Pa. 303, 314 A.2d 242]

---

Before JONES, C. J. and EAGEN, O'BRIEN, ROBERTS,  
POMEROY and MANDERINO, JJ.

---

OPINION OF THE COURT

---

ROBERTS, Justice.

In October of 1966, a jury found appellant guilty of the crimes of murder in the first degree and rape. A sentence of life imprisonment was imposed. On appeal, this Court reversed the judgment of sentence and granted a new trial because appellant's rights, as mandated by *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L. Ed 2d 694 (1966), were violated. *Commonwealth v. Yount*, 435 Pa. 276, 256 A.2d 464 (1969) cert. denied, 397 U.S. 925, 90 S.Ct. 918, 25 L.Ed. 2d 104 (1970).

On retrial in November, 1970, a jury again found appellant guilty of murder in the first degree,<sup>1</sup> and the penalty was again fixed at life imprisonment. Post-trial motions were denied and this direct appeal followed.<sup>2</sup> We now affirm.

On April 28, 1966, the body of Pamela Sue Rimer, an eighteen year-old high school student, was discovered in a wooded area near her home in Luthersburg, Pennsylvania. One of her stockings was knotted and tied around her neck. An autopsy revealed that death was caused by strangulation. Further examination disclosed three slashes across the victim's throat and cuts of the fingers of her left hand inflicted by a sharp instrument, and numerous wounds about her head, caused by a blunt instrument.

At approximately 5:45 a.m. on the morning of April 29, 1966, appellant, a teacher at the school the deceased had attended, voluntarily appeared at the state police substation in DuBois, Pennsylvania, and rang the doorbell. An officer opened the door and asked whether he could be of assistance. Appellant stated, "I am the man you are looking for." The officer asked whether he was referring to the "incident in Luthersburg," and appellant responded in the affirmative.

The officer then asked appellant to come into the police station and be seated. Leaving appellant unattended, the officer proceeded to a back bedroom where a detective and another police officer were sleeping, woke

---

<sup>1</sup> Appellant's motion to quash the indictment for rape was granted, and the second trial was for the crime of murder alone.

<sup>2</sup> Jurisdiction attaches by virtue of the Appellate Court Jurisdiction Act of 1970, Act of July 31, 1970, P.L. 673, art. II, §202(1), 17 P.S. §211.202(1) (Supp. 1973).



them, and informed them that "there was a man in the front that said we are looking for him." He then returned to the front office where appellant, who had removed his coat, hat, and gloves, identified himself as Jon Yount.

After dressing, the detective and the second officer entered the front office. The detective was told by the first officer that appellant's name was Jon Yount. The detective then asked appellant to be seated inside a smaller office adjacent to the front office, where he asked, "Why are we looking for you?" Appellant replied, "I killed that girl." Upon hearing that answer, the detective inquired, "What girl?", and appellant responded, "Pamela Rimer."

In response to the detective's next question, "How did you kill this girl?", appellant answered, "I hit her with a wrench and I choked her." At that point the detective gave appellant admittedly inadequate *Miranda* warnings, and began interrogation as to the details of the crime. A written confession was subsequently obtained.

Prior to appellant's second trial, the question "How did you kill this girl?" and its answer, as well as the written confession were suppressed, on the authority of our prior decision, *Commonwealth v. Yount*, supra, as violative of *Miranda*. The admissibility of appellant's initial statements that the police were looking for him in connection with the Luthersburg incident is not challenged, nor could a challenge be successful. See *Commonwealth v. Miller*, 448 Pa. 114, 121 n.2, 290 A.2d 62, 65 n.2 (1972).

Appellant does contend, however, that the court erred in not suppressing his statement, "I killed that girl," and his identification of the victim as "Pamela Rimer."

It is argued that these two admissions were the product of "custodial interrogation" and therefore should have been preceded by *Miranda* warnings. Appellant argues that warnings were required *before* the question "Why are we looking for you?" was asked.<sup>3</sup> We are asked to determine the precise time when the need for *Miranda* warnings arose. It is now beyond question that "'whenever an individual is questioned while in custody or while the object of an investigation of which he is the focus, before any questioning begins the individual must be given the warnings established in *Miranda*. . . .'" *Commonwealth v. D'Nicuola*, 448 Pa. 54, 57, 292 A.2d 333, 335 (1972) (quoting *Commonwealth v. Feldman*, 432 Pa. 428, 432, 248 A.2d 1, 3 (1968)). Accord, *Commonwealth v. Simala*, 434 Pa. 219, 225, 252 A.2d 575, 578 (1969); see *Commonwealth v. Hamilton*, 445 Pa. 292, 285 A.2d 172 (1971).

It is, however, only that questioning which is interrogation initiated by law enforcement officers which calls for *Miranda* warnings. *Miranda v. Arizona*, supra at 444, 86 S.Ct. at 1612, 16 L.Ed. 2d 694. As this Court held in *Commonwealth v. Simala*, supra at 226, 252 A.2d at 578: "'[I]t is not simply custody plus 'questioning,' as such, which calls for the *Miranda* safeguards but custody plus police conduct . . . calculated to, expected to, or likely to, evoke admissions.'" The rationale behind this holding is found in *Miranda*, where the Court stated: "Confessions remain a proper element in law enforcement. . . .

---

<sup>3</sup> In our prior decision, a new trial was granted because the written confession admitted into evidence was not preceded by warnings satisfying *Miranda*. The question of the admissibility of the two statements here challenged, not being necessary to our earlier decision, was not there decided.

The fundamental import of the privilege . . . is not whether [an individual] is allowed to talk to the police without the benefit of warnings and counsel, *but whether he can be interrogated*. There is no requirement that the police stop a person who enters a police station and states that he wishes to confess to a crime. . . . Volunteered statements of any kind are not barred by the Fifth Amendment. . . ." *Miranda v. Arizona*, supra at 478, 86 S.Ct. at 1630 (emphasis added).

Clearly, "any question likely to or expected to elicit a confession constitutes 'interrogation' under *Miranda*. . . ." *Commonwealth v. Simala*, supra, at 227, 252 A.2d at 579. Accord, *Commonwealth v. Mercier*, 451 Pa. 211, 214, 302 A.2d 337, 339 (1973). But "[a]ny statement given freely and voluntarily without any compelling influences is, of course, admissible in evidence" *Miranda v. Arizona*, supra at 478, 86 S.Ct. at 1630, 16 L.Ed. 2d 694.

On this record it cannot be said that the two police inquiries here challenged constitute conduct calculated to, expected to, or likely to elicit an incriminating response, or that they were asked with an intent to extract or an expectation of eliciting an incriminating statement. All this record establishes is that the detective knew only that a man named Jon Yount—a name which the detective had never heard before—voluntarily came to the police station early in the morning and volunteered that the police were looking for him. In response to this information, the detective extemporaneously asked, "Why are we looking for you?" Appellant was not coerced, prompted, or urged to incriminate himself. To the contrary, the detective's inquiry, made in response to information volunteered by appellant, was of a neutral character and not interrogative.

Appellant's answer, "I killed that girl," was given freely and without compelling influence. It was therefore volunteered in the constitutional sense. That the answer was in fact incriminating does not alter its volunteered character nor preclude its use. *Miranda v. Arizona*, supra at 478, 86 S.Ct. at 1630, 16 L.Ed. 2d 694.

Similarly, we are of the opinion that the statement identifying "that girl" as "Pamela Rimer" was volunteered. Appellant, without any compulsion, went to the substation and volunteered that he had killed "that girl." As we indicated in *Commonwealth v. Simala*, supra at 226 n.2, 252 A.2d at 579 n.2, after an incriminating, but ambiguous, statement is volunteered, as was done here, a question which does not do "anything more than clarify statements already made," in the absence of any coercion or prompting, subtle or overt, is permissible. See also Kamisar, " 'Custodial Interrogation' Within the Meaning of *Miranda*," in Institute of Continuing Legal Education, Criminal Law and the Constitution—Sources and Commentaries 335, 354 (1968).

Here, immediately upon hearing appellant's volunteered statement, "I killed that girl," the detective spontaneously asked, "What girl?" By this he sought only to clarify appellant's prior statement. Appellant responded, "Pamela Rimer." Such a clarifying inquiry, made in response to a statement volunteered by appellant during an interview which he initiated, is proper. The identification must be deemed constitutionally volunteered. Accord, *State v. Perry*, 14 Ohio St.2d 256, 237 N.E.2d 891 (1968); *People v. Mercer*, 257 Cal.App.2d 244, 64 Cal. Rptr. 861 (1967); see *Hicks v. United States*, 127 U.S. App. D.C. 209, 382 F.2d 158 (1967).

As already indicated, appellant volunteered both that he had killed someone and the victim's identity. Because "[v]olunteered statements . . . are not barred by the Fifth Amendment," *Miranda v. Arizona*, supra at 478, 86 S.Ct. at 1630, their use as evidence was constitutionally permissible.

However, after these statements were given, *Miranda* warnings became necessary. *Commonwealth v. Yount*, supra at 280, 256 A.2d at 466; see *Commonwealth v. Feldman*, 432 Pa. 428, 248 A.2d 1 (1968); *Commonwealth v. Jefferson*, 423 Pa. 541, 226 A.2d 765 (1967). Appellant's initial admission and identification created the critical moment after which interrogation without *Miranda* warnings was impermissible. It was the absence of warnings at that moment, and not before, that required our prior reversal. The earlier, volunteered statements, however, were not the product of interrogation initiated by the police.<sup>4</sup>

On this record, therefore, it must be concluded that the Commonwealth satisfied its burden of proving by a preponderance of the credible evidence that the two statements here challenged were constitutionally permissible evidence. *Commonwealth v. Ravenell*, 448 Pa. 162, 292 A.2d 365 (1972); Pa.R.Crim.P. 323(h), 19 P.S. Appendix.

Appellant raises ten additional assignments of error. These need be discussed only briefly.

---

<sup>4</sup> In light of our determination that appellant's statements were volunteered, we need not determine, as the Commonwealth argues, whether appellant was then in "custody." See *Commonwealth v. Marabel*, 445 Pa. 435, 283 A.2d 285 (1971).

Appellant contends that the trial court erred in refusing his timely motions for a change of venue, and advances three arguments in support of this position. First, it is asserted that excessive pretrial publicity prevented a fair trial. In responding to this argument, the trial court observed: "The first of the trials occurred in 1966, and as pointed out herein, the second one occurred in 1970. As the record will indicate there was practically no publicity given to this matter through the news media in the meanwhile except to report that a new trial had been granted by the Supreme Court. It is to be noted also that throughout the second trial there was practically no public interest shown in the trial; one thing to be noted is that on some days there being practically no persons present even to listen to it. . . ." These findings, fully supported by the record, do not sustain appellant's claim, and the court properly denied appellant's motion for a change of venue predicated on this theory. *Commonwealth v. Pierce*, 451 Pa. 190, 303 A.2d 209, cert. denied, 414 U.S. 878, 94 S.Ct. 164, 38 L.Ed. 2d 124 (1973); *Commonwealth v. Johnson*, 440 Pa. 342, 269 A.2d 752 (1970).

Second, appellant contends that the excusing of a large number of veniremen for cause, and the nature of the answers of those so excused, conclusively demonstrated substantial community bias and prejudice which required a change of venue. Nothing in this record, however, refutes the court's assertion that it liberally granted appellant's challenges for cause "to assure that there could be no complaint about the final jury empanelled." Neither does the voir dire, as appellant argues, reveal a "clear and convincing" build-up of prejudice or a "'pattern of deep and bitter prejudice' shown . . . throughout the com-

munity" which would require a change of venue. *Irvin v. Dowd*, 366 U.S. 717, 725, 727, 81 S.Ct. 1639, 1644, 1645, 6 L.Ed. 2d 751 (1961). See *Commonwealth v. Hoss*, 445 Pa. 98, 103-07, 283 A.2d 58, 61-63 (1971); *Commonwealth v. Swanson*, 432 Pa. 293, 248 A.2d 12 (1968), cert. denied, 394 U.S. 949, 89 S.Ct. 1287, 22 L.Ed. 2d 483 (1969).

Third, it is argued that the Act of March 18, 1875, P.L. 30, §1, 19 P.S. §551 (1964), mandated a change of venue. This Act states, inter alia:

"In criminal prosecutions the venue may be changed, on application of the defendant . . .

. . . . .

. . . When, upon second trial of any felonious homicide, the evidence on the former trial thereof shall have been published within the county in which the same is being tried, and the regular panel of jurors shall be exhausted without obtaining a jury."

The Act, however, by its own terms, is directed to the sound discretion of the trial court. As this Court established in *Commonwealth v. Karmendi*, 328 Pa. 321, 337-338, 195 A. 62, 69 (1937): "The act is not madatory; it lies within the sound discretion of the court below: *Com. v. Cleary*, 148 Pa. 26, 23 A. 1110, but in a particularly notorious case in a given community, this court will review that discretion, and if in its judgment it is felt the accused could not help but be prejudiced in her subsequent trial by the feeling engendered, a new trial will be granted. . . ." See also *Commonwealth v. Sacarakis*, 196 Pa. Super. Ct. 455, 175 A.2d 127 (1961). Although the



regular panel of jurors was in fact exhausted before the jury was selected,<sup>5</sup> this circumstances alone obviously does not require a change of venue. It cannot be said that the court abused its discretion where, as here, the record fails to disclose undue community prejudice.

Similarly, we reject appellant's argument that, during voir dire, the court erred in denying certain challenges for cause. Our reading of the testimony of the challenged jurors satisfies us that the trial court correctly concluded that "even where a juror may have had any opinion in the matter, the jury was without prejudice and was able to and did arrive at its verdict on the testimony and the law involved." The record shows that none of the jurors had a fixed opinion as to appellant's guilt or innocence, or was otherwise legally unable to serve. See *Commonwealth v. Hoss*, supra at 107, 283 A.2d at 63-64; *Commonwealth v. Swanson*, supra at 299, 248 A.2d at 15; *Commonwealth v. McGrew*, 375 Pa. 518, 525, 100 A.2d 467, 470 (1953).<sup>6</sup>

---

<sup>5</sup> Indeed, the exhaustion of the initial array is not an unusual occurrence. As Dean Laub observed: "It sometimes happens that there are so many disqualified or excused jurors that the array is not large enough to permit the completion of a particular civil or criminal panel. This extraordinary situation is frequently encountered during the selection of a panel in murder cases. In that type of case the large number of peremptory challenges allowed to each side, and the liberal allowance of causal challenges frequently exhausts the array or reduces it to the point where the trial cannot proceed until additional jurors have been summoned." 1 B. Laub, *Pennsylvania Trial Guide* §34.4 at 81 (1959).

<sup>6</sup> See also ABA Project on Minimum Standards for Criminal Justice, *Standards Relating to Trial by Jury* §2.5 (Approved Draft, 1968). The Commentary to that section suggests:



Appellant also argues that all evidence seized during a search of his automobile should have been suppressed. He asserts that the search warrant relied upon by the police was issued without probable cause.

Before the time appellant appeared at the DuBois substation, another state policeman, working entirely separately and in a location different from the station to which appellant went, received from two witnesses a description of an automobile they had seen near where the victim's body was found. The witnesses reported that, at about the time the murder was committed, the automobile passed their home headed toward the scene, and that later it passed from the opposite direction traveling at high speed. That policeman, working only from this information, learned that one Jon Yount owned an automobile fitting the description.

After appellant admitted that he had killed Pamela Rimer, one of the officers at the substation reported that fact to the main police barracks. This collective knowl-

---

"A challenge for cause to an individual juror may be made only on the ground:

. . . . .

(j) That the juror has a state of mind in reference to the cause or to the defendant or to the person alleged to have been injured by the offense charged, or to the person on whose complaint the prosecution was instituted, which will prevent him from acting with impartiality; but the formation of an opinion or impression regarding the guilt or innocence of the defendant shall not of itself be sufficient ground of challenge to a juror, if he declares, and the court is satisfied, that he can render an impartial verdict according to the evidence." *Id.* 68-69.

edge, properly before the magistrate,<sup>7</sup> constituted the requisite probable cause for the issuance of the search warrant. See *Spinelli v. United States*, 393 U.S. 410, 89 S. Ct. 584, 21 L.Ed. 2d 637 (1969); *Aguilar v. Texas*, 378 U.S. 108, 84 S.Ct. 1509, 12 L.Ed. 2d 723 (1964); *Commonwealth v. Hall*, 451 Pa. 201, 302 A.2d 342 (1973); *Commonwealth v. D'Angelo*, 437 Pa. 331, 263 A.2d 441 (1970). Since appellant's admission was not tainted we agree with the trial court that the subsequent search was not impermissible as the "fruit of a poisonous tree." *Commonwealth v. Marabel*, 445 Pa. 435, 444, 283 A.2d 285, 289 (1971); see *Wong Sun v. United States*, 371 U.S. 471, 83 S.Ct. 407, 9 L.Ed. 2d 441 (1963).

Appellant contends that a pocketknife found on his person when he was arrested was improperly admitted into evidence. As previously noted, the victim suffered cuts of the neck and fingers, and appellant was arrested about twelve hours after the commission of the crime. The knife was of a kind that could have inflicted the wounds, even though the prosecution was unable conclusively to demonstrate that the particular knife was the weapon used. Its relevance cannot be successfully challenged. "The fact that the accused had a weapon or implement suitable to the commission of the crime charged, such as a knife . . . is always a proper ingredient of the case for the prosecution." 1 Wharton's Criminal Evidence §157 at 289-90 (13th ed. C. Torcia 1972).

---

<sup>7</sup> For purposes of establishing probable cause, the officer who obtained the warrant was entitled to rely on the information communicated to him from the DuBois substation. *United States v. Stratton*, 453 F.2d 36, 37-38 (8th Cir.), cert. denied, 405 U.S. 1069, 92 S.Ct. 1515, 31 L.Ed. 2d 800 (1972).

This relevant evidence clearly was admissible. As this Court recently held in *Commonwealth v. Ford*, 451 Pa. 81, 84, 301 A.2d 856, 857 (1973): "[P]ositive testimony that the knife in question was actually the murder weapon is not required prior to introduction into evidence. . . . If a proper foundation for admission of the evidence has been laid, as here, then admission into evidence is permissible. . . . The fact that the knife could not be positively identified affects the weight of such evidence, but not its admissibility. . . ."<sup>8</sup>

Here, not only was the knife a possible murder implement, but it was found upon the person of the appellant at a time "reasonably proximate to the commission of the crime." 1 Wharton's Criminal Evidence §211 at 442 (13th ed. C. Torcia 1972). A foundation sufficient to support the admission of the knife was laid. Its evi-

---

<sup>8</sup> See also 1 Wharton's Criminal Evidence §211 at 441-42 (13th ed. C. Torcia 1972) (footnotes omitted):

"It is relevant to show that the defendant owned or had access to an implement with which the crime could have been committed.

The possession by the defendant of a weapon or implement of crime is relevant even though there is no evidence that it was used in the commission of any particular crime, but there must be evidence that some crime was committed.

The possession or ownership of the weapon or implement of crime must be reasonably proximate to the commission of the crime. If too great a period has elapsed between the commission of the crime and the period of possession or ownership, the evidence would be too remote and hence inadmissible. Thus, in a prosecution for assault with intent to kill, the admission in evidence of the finding of a weapon on the person of the accused when he was arrested, nearly a month after the assault, was prejudicial error."

dentiary use was therefore a proper element in the prosecution's case.<sup>9</sup>

Appellant assigns as error the admission of certain photographs of decedent and several items of her clothing, including the knotted stocking which was one of the murder weapons. It is well-settled law in this Commonwealth that "the admission of photographs exhibiting the body of a deceased in homicide cases is primarily within the discretion of the trial judge. . . ." *Commonwealth v. Powell*, 428 Pa. 275, 278, 241 A.2d 119, 121 (1968). Moreover, this Court has repeatedly declared that "the proper test to be applied by a trial court in determining the admissibility of photographs in homicide cases is whether or not the photographs are of such essential evidentiary value that their need clearly outweighs the likelihood of inflaming the minds and passions of the jurors. . . ." *Id.* at 278-79, 241 A.2d at 121. Accord, *Commonwealth v. Ford*, *supra* at 86, 301 A.2d at 858; *Commonwealth v. Eckhart*, 430 Pa. 311, 317, 242 A.2d 271, 274 (1968). This test is also applicable to the other demonstrative evidence, i.e., the clothing, admitted here. See *Commonwealth v. Ford*, *supra* at 85, 301 A.2d at 858.

It is to be noted that the stocking was one of the murder implements. The paramount evidentiary need for this item is obvious. As to the other challenged items, the court found, and we agree that "[t]he photographs aided in the jurors' [sic] understanding of the type of injuries inflicted, where and how the deceased was found, the site and position of the deceased, and in very definite corrob-

<sup>9</sup> Appellant also contends that he was entitled to an instruction that the knife had no evidentiary value. Because the knife was correctly admitted, appellant's point for charge was properly refused.

oration of the oral testimony of witnesses. . . ." More-over, the court stated that "the photographs were [not] at all inflammatory [sic]," and there is no suggestion that the victim was, for example, pictured naked, or that the photographs or items of clothing were gruesome or grotesque.<sup>10</sup> On this record, we hold that the court correctly applied the *Powell* test, that the evidentiary value of the admitted evidence outweighed any potential for prejudice, and that the court did not abuse its discretion in admitting the challenged items.

Appellant also argues that the trial court erred in denying his motion to sequester the Commonwealth witnesses, particularly the state police officers. This Court has previously held that "the question of sequestration of witnesses is left largely to the discretion of the trial Judge and his decision thereon will be reversed only for a clear abuse of discretion." *Commonwealth v. Kravitz*, 400 Pa. 198, 218, 161 A.2d 861, 870 (1960), cert. denied, 365 U.S. 846, 81 S.Ct. 807, 5 L.Ed. 2d 811 (1961); see Pa. R.Crim.P. 326.

In its opinion the court justified its denial of the motion, by explaining that "no witness was called who had not previously testified at the first trial; and examination of all the testimony will indicate that it was much as was given at the first trial of this case." These witnesses were not sequestered at the first trial. The record also establishes that the same police officers who testified at trial also testified a few weeks earlier at the suppression hearing. No request to sequester was then made. We find the court's reasons for refusing to sequester the officers convincing, and find no abuse of discretion.

---

<sup>10</sup> We also note that the court in its discretion did not allow these allegedly inflammatory items into the jury room.

It is also argued that the trial court variously erred in its instructions to the jury. Only one of these now-asserted challenges, however, was properly raised by specific objection before the jury retired to deliberate. That objection alone can now be reviewed. *Commonwealth v. Watlington*, 452 Pa. 524, 306 A.2d 892 (1973); Pa.R. Crim.P. 1119(b). The objection is to an allegedly improper expression of the court's opinion that the evidence did not warrant a verdict of voluntary manslaughter.<sup>11</sup>

The trial court expressed the view that if the jury found that appellant did in fact maliciously kill decedent, the court recalled no evidence of extenuating circumstances which would reduce the act to voluntary manslaughter. The court, however, also gave the jurors a full, complete, adequate, and correct charge on voluntary manslaughter, and instructed them that voluntary manslaughter was an entirely permissible verdict. The trial judge also specifically instructed the jurors that their recollection of the testimony, and not his, controlled, that his opinion was no more than a gratuitous observation, and that the jury could and should return any verdict it felt justified. Moreover, the court did not express an opinion as to guilt or innocence or suggest that the jury return any particular verdict. The charge, read in its entirety, removed nothing from the province of the jury nor did it contain any judicial expression of guilt. The charge therefore was proper. *Commonwealth v. Archambault*, 448 Pa. 90, 290 A.2d 72 (1972); *Commonwealth v. Motley*, 448 Pa. 110, 289

---

<sup>11</sup> Appellant also argues that the court overemphasized the crime of murder in the first degree, and that it did not, while reviewing the evidence, sufficiently stress the jury's role as fact-finder.

A.2d 724 (1972); see *Commonwealth v. Miller*, 448 Pa. 114, 124-26, 290 A.2d 62, 67-68 (1972).

Appellant complains that the court erred in denying his motion for a mistrial based on allegedly inflammatory and prejudicial remarks by the prosecutor in his closing argument.<sup>12</sup> We are satisfied, as was the trial court, that the prosecutor's remarks were limited to the facts in evidence and the legitimate inferences therefrom, and consequently cannot be deemed improper. See *Commonwealth v. Goosby*, 450 Pa. 609, 301 A.2d 673 (1973); American Bar Association Project on Standards for Criminal Justice, Standards Relating to the Prosecution Function §5.8 (Approved Draft, 1971).

Finally, appellant contends that if the oral admission, the pocketknife, the clothing and photographs, and the items seized from appellant's automobile were improperly before the jury, then the remaining evidence could not sustain any verdict of guilty. Since we have determined that those items of evidence were properly admitted, this challenge must fail. Reviewing all the record evidence in the light most favorable to the Commonwealth, we are satisfied that the jury reasonably could have found, beyond a reasonable doubt, all the elements of murder in the first degree, and that the evidence therefore is sufficient to sustain the verdict. *Commonwealth v. Lee*, 450 Pa. 152, 154, 299 A.2d 640, 641 (1973).

Judgment of sentence affirmed.

POMEROY J., concurs in the result.

---

<sup>12</sup> It is contended that the prosecutor improperly commented on the gravity of the crime charged, that the inferences he drew from the evidence tended toward the speculative, and that he improperly defended, after appellant had attacked, the competence of the state police.



IN THE UNITED STATES DISTRICT COURT FOR  
THE MIDDLE DISTRICT OF PENNSYLVANIA

Case No. 81-234

Jon E. Yount, pro se,

*Petitioner*

—vs.—

Ernest S. Patton, Superintendent, SCI—Camp Hill,  
*Respondent*

and

Harvey Bartle III, Attorney General of the Commonwealth  
of Pennsylvania,

*Additional Respondent.*

MOTION FOR LEAVE TO PROCEED IN FORMA  
PAUPERIS

AND, now comes the petitioner, Jon E. Yount, pro se, and moves this Honorable Court for leave to proceed with this Petition for a Writ of Habeas Corpus *in forma pauperis* pursuant to Title 28 U.S.C. §1915, without first being required to pay fees and costs or otherwise being required to give security therefor. In support of this motion, Petitioner has attached his Affidavit of Poverty hereto.

Respectfully submitted,

(s) Jon E. Yount

Jon E. Yount, Petitioner

P.O. Box 200; C-8297

Camp Hill, Pa. 17011

Dated: January 5, 1981



## AFFIDAVIT OF POVERTY

[Caption Omitted]

I, Jon E. Yount, being first duly sworn, depose and say, in support of my Motion to Proceed *in Forma Pauperis*, that:

1. I am the Petitioner in the above entitled case;
2. I believe that I am entitled to relief;
3. Because of my poverty, I am unable to pay the costs of said proceeding or to give security therefor;
4. I am unemployed except for my prison wage which amounts to approximately \$45.00 per month;
5. I have received no money during the past twelve months from any business, interest, dividends or any other source of income except gifts from my family which totaled \$50.00-\$100.00;
6. I do not own cash, or do I have money in a checking or savings account except in my prison account which is \$34.80;
7. I do not own any real estate, stocks, bonds, notes, automobiles or other valuable property; and
8. I have no persons other than myself dependant upon me for support.

I understand that a false statement in this affidavit will subject me to penalties for perjury.

(s) Jon E. Yount  
Jon E. Yount, Petitioner  
P.O. Box 200; C-8297  
Camp Hill, Pa. 17011

[Jurat Omitted]

**PETITION FOR WRIT OF HABEAS CORPUS**

**[Caption Omitted]**

---

Comes the Petitioner, Jon E. Yount, and moves this Court pursuant to Title 28 U.S.C. §2254 to issue a Writ of Habeas Corpus. In support of his petition, Petitioner shows and alleges:

1. The name and location of the court which entered the judgment of conviction under attack is the Court of Oyer and Terminer, Clearfield, Clearfield County, Pennsylvania.

2. The date of judgment of conviction was November 20, 1970; effective date of sentence was April 29, 1966.

3. The length of sentence imposed by John A. Cherry, P.J., was life imprisonment.

4. Petitioner was convicted of Murder of the First Degree.

5. Petitioner's plea was "not guilty".

6. Petitioner was convicted by a jury of twelve.

7. Petitioner did not testify at trial.

8. Petitioner did appeal from the judgment of conviction.

9. Petitioner's appeal to the Supreme Court of Pennsylvania was denied on January 24, 1974; this followed the denial of his direct appeal by the Trial Court.

10. Other than a direct appeal from the judgment of this conviction and sentence, petitioner has not filed any petitions, applications or motions with respect to this judgment in any court, state or federal.

11. Petitioner bases his claim that he is being held unlawfully on three grounds as follows:

12-A. PETITIONER'S CONVICTION WAS OBTAINED BY A VIOLATION OF HIS PRIVILEGE AGAINST SELF-INCRIMINATION THROUGH THE USE OF ORAL STATEMENTS ELICITED WITHOUT REQUIRED MIRANDA WARNINGS.

The victim, Pamela Sue Rimer, an 18-year-old high-school student, was slain at Luthersburg, Pennsylvania, at approximately 5:00 PM on April 28, 1966. The police obtained a description of the suspect, one that quite accurately fit Petitioner, from two witnesses, as well as a description of the vehicle that the suspect was seen driving near the scene of the crime. These descriptions, along with the fact that Petitioner, a teacher of the victim, was seen to have been driving a vehicle similar to that broadcast on police radios, were known to investigating state police. There were no other suspects and no other major incidents in the Luthersburg area; the state police conducted a continuous, intensive investigation from the evening of April 28 when the body was discovered at approximately 5:30 PM until Petitioner voluntarily appeared at the Pennsylvania State Police Substation in Luthersburg at 5:30 AM, April 29, 1966. Trooper Phillips, the officer in charge of communications in the investigation, confronted Petitioner at the door of the substation, asked him what he wanted—to which Petitioner replied "I'm the man you are looking for", and, after having him repeat this statement, asked if he was referring to the "Luthersburg incident"; Petitioner responded "Yes".

Petitioner was well-dressed and fit the description broadcast (dark suit, light shirt, car coat, crewcut, dark-rimmed glasses). Tpr. Phillips had Petitioner come into

the substation and sit down, hurriedly awakened Tpr. Bedford and Detective Kerr—asleep in nearby rooms, explained to them that there was a man at the desk who said he was the man they were looking for in regard to the Luthersburg incident, returned to Petitioner within 1-1½ minutes because he did not want to leave him alone, and then confiscated the operator's license from Petitioner's wallet. Tpr. Bedford and Det. Kerr immediately came into the communications room, each in turn looking at Petitioner's operator's license for identification purposes (the license was never returned to Petitioner), took him into a small, adjacent office, searched him, confiscated a pocket knife that was in his possession, and then asked Petitioner: "Why are we looking for you?" to which he allegedly replied "I killed that girl." Det. Kerr claims to have then asked "What girl?" to which Petitioner allegedly responded "Pamela Rimer." Kerr continued "How did you kill this girl?"; Petitioner allegedly replied "I hit her with a wrench and I choked her."

The Commonwealth concedes that no *Miranda* warnings were given to Petitioner by any officer prior to this point. The alleged oral admissions "I killed that girl." and "Pamela Rimer." were introduced into evidence at trial over objection by Petitioner; he was convicted of murder of the first degree. Petitioner contends that given (a) the description of the suspect available to police which almost precisely fit Petitioner as he stood before Phillips, Bedford and Kerr in the substation, (b) the voluntary initial statements made to Tpr. Phillips at the door of the substation and related to Kerr and Bedford before they confronted Petitioner, (c) that no other incidents of note occurred in Luthersburg, (d) that Phillips, Kerr and Bedford did not return Petitioner's operator's license, (e) that the police

officers took Petitioner into a small interrogation room, (f) searched him, (g) confiscated his pocket knife, and (h) telephoned other police officers, all before eliciting the two oral statements admitted over objection at trial, clearly demonstrates that Tpr. Phillips, Tpr. Bedford and Det. Kerr had no doubt why Petitioner had come to the substation, and even more relevant, left absolutely no doubt in Petitioner's mind that he was in custody, and if not technically under arrest, was the focus of the investigation and was not free to leave the substation.

Det. Kerr later testified that he would have used any legal means to keep Petitioner from leaving the substation. Of course, without his operator's license, Petitioner could not legally drive away from that *very rural* substation. Therefore, Petitioner contends that full Miranda warnings were required before police conducted custodial interrogation and asked questions that were not only likely but intended to elicit incriminating statements on which his conviction was to be based.

(For additional information, refer to the accompanying brief.)

**12-B. PETITIONER'S CONVICTION WAS OBTAINED IN VIOLATION OF HIS CONSTITUTIONAL RIGHT TO SELECT AND EMPANEL A FAIR, IMPARTIAL AND "INDIFFERENT" PETIT JURY.**

Petitioner, a high-school teacher, was arrested on April 29, 1966 and charged with murder and rape in connection with the slaying of one of his students, Pamela Sue Rimer. The rural county of Clearfield (population — 80,000; registered voters—34,000) was inundated with newspaper, magazine, radio and television accounts of details of the crime, arrest and arraignment of Petitioner,

preliminary hearing, and other pre-trial hearings. Throughout the lengthy trial, beginning September 28, 1966, during which he was convicted of rape and murder of the first degree following a plea of "not guilty by reason of insanity", and during post-trial motions and appeals, the deluge of publicity continued. Considerable attention was given by the media to Petitioner's alleged confessions to the police which were introduced at trial. Most prejudicial was the daily newspaper, radio and television coverage of Petitioner's admissions of commission of the *homicide* during his testimony at this first trial.

In June, 1969, following 2½ years of continued publicity surrounding his appeals, the Pennsylvania Supreme Court reversed Petitioner's conviction on the basis of inadequate *Miranda* warnings, a decision that was appealed by the Commonwealth to the United States Supreme Court where certiorari was denied. These events, unprecedented in Clearfield County, caused an even greater surge of local media coverage, concentrating, as did the opinion of the court reversing the conviction, on the alleged confessions and admissions of guilt by Petitioner. Pre-trial motions were again conducted, and again prospective jurors were bombarded with prejudicial details. Although the Commonwealth did not prosecute the charge of rape at retrial, the media continued to "inform" the citizenry that Petitioner was to be retried for murder *and rape*, and continued to do so well into the retrial when Petitioner personally informed reporters in the courtroom of their error. Of course, no retraction was printed, and it was from this "informed" populace that fair and impartial jurors were to be empaneled.

Pre-trial hearings were conducted on June 5, July 29, August 17, and November 3, 1970 by the Trial Court, all

accompanied by prejudicial publicity; the Trial Court denied Petitioner's pre-trial motion for a change of venue. During Voir Dire, which encompassed eleven working days, five panels of prospective jurors were called, examined and exhausted at the expense of Petitioner's peremptory challenges; Petitioner renewed his Motion for Change of Venue upon exhaustion of each panel of prospective jurors and each motion was denied by the Trial Court. Petitioner's statistics reflect that of 158 persons who underwent Voir Dire, 82% held opinions with respect to his guilt or innocence (none volunteered an opinion that he was innocent!) and 70% had "fixed" opinions. Evidence was elicited during Voir Dire that prospective jurors had been intimidated by efforts to influence decisions against Petitioner if those jurors were chosen to serve on the jury. Of 117 prospective jurors who were asked about their knowledge of the case, 94% indicated they had either read newspaper and/or magazine accounts of the case, 76% had discussed, heard discussed and/or heard opinions expressed about this case, and 32% admitted hearing and/or seeing radio and television coverage of the case.

Of the twelve seated jurors, nine stated they had read about or heard about the case on radio and/or television, seven stated they had discussed the case with others or had heard it discussed, at least seven stated that they had held—or still held—opinions regarding Petitioner's guilt, and despite the fact that all indicated they would judge the case on the evidence, two stated that they would require Petitioner to prove his innocence. Three stated they wanted to be on the jury, and one, selected after exhaustion of Petitioner's peremptory challenges, had been a client of the District Attorney and had worked for the prosecutor's elec-



tion. This bias did not merely involve one or two jurors, but permeated the entire jury. Petitioner contends that such a jury falls far short of meeting the constitutional requirements of a jury that is "fair, impartial, and 'indifferent' ". Petitioner also contends that the Trial Court made several erroneous rulings during the course of Voir Dire on his challenges for cause that effectively eliminated whatever improbable opportunity Petitioner had of selecting and empaneling a fair jury.

(For additional information, refer to the accompanying brief and attached appendices.)

12-C. PETITIONER'S CONVICTION WAS OBTAINED IN VIOLATION OF HIS CONSTITUTIONAL RIGHT TO A FAIR AND IMPARTIAL TRIAL AS A RESULT OF THE TRIAL COURT'S PREJUDICIAL CHARGE TO THE JURY AND INCLUDED ERRONEOUS INSTRUCTIONS.

Pennsylvania has no statutory definition of murder. The Court relied on the following statute in its charge: "All murder which shall be perpetrated by means of poison, or by lying in wait or by any other kind of willful, deliberate and premeditated killing shall be murder in the first degree. All other kinds of murder shall be murder of the second degree." Petitioner did not testify at his retrial. The Commonwealth built its case on proof of a *corpus delecti* and an alleged simple admission of the commission of the homicide by Petitioner for a finding of guilty of murder of the first degree. With no eyewitnesses to the actual killing, and with only a pocket knife—seized from Petitioner upon his arrest—that contained no traces of blood, the jury was requested to, and did, find malice and intent to kill in this case. In light of this "evidence", and the



foregoing description of the biased convicting jury, Petitioner contends that the following instructions to the jury by the Trial Court were highly prejudicial and constituted harmful and reversible error.

(a) The Trial Court placed undue emphasis on instructions regarding murder of the first degree, beginning its discussion and definitions of possible verdicts with first-degree murder, rather than with murder in general or murder of the second degree. The implication of these instructions, read as a whole, is that all murder is first-degree murder unless it is proven that *intent did not exist* rather than the constitutionally-correct requirement that the Commonwealth prove intent to kill before murder of the second degree may be elevated to first-degree murder.

(b) The Trial Court not only began its instructions regarding possible verdicts with murder of the first degree, but *emphasized* unnecessary and prejudicial instructions, prior to deliberation by the jury regarding petitioner's guilt or innocence, that placed before the jury the penalties prescribed by law in cases of first-degree murder convictions. The Trial Court stressed that the law had removed the jury's right to impose the death penalty in this case. Despite the fact that the Court later made a single comment that the jury was not to be concerned with penalty, the instructions that included only the penalties of either "life" or "death" may well have led *this* jury to believe that all murder now carried a penalty of life imprisonment and that the jury need not dwell on the differences between first and second degree murder. Certainly, the issue of penalty for any verdict had no place in the Pennsylvania two-stage system prior to a verdict of murder of the first degree; but, if the Trial Court chose to inject these penalty-instructions prematurely, a fair trial would have required

that the Court also inform the jury of available penalties for all possible verdicts.

(c) The Trial Court instructed the jury that every person is *presumed* to intend the natural and probable consequences of his act, and that the *intentional*, unlawful and fatal use of a deadly weapon against a vital part of the body gives rise to the presumption that *malice* and *intent to kill* existed. The Court described the presumption as a "presumption of fact"; no distinction was made between a presumption of law and one of fact, and, although the Court instructed the jury that the presumption of malice and intent to kill was rebuttable, it did not instruct the jury regarding the burden of providing proof of such intent or of the rebuttal of that intent. A reasonable juror could have concluded that the presumption of malice and intent to kill was a burden for the Petitioner to overcome after the Commonwealth had overcome a similar presumption of his innocence. This would unconstitutionally shift the burden of proof to Petitioner, especially with a jury so predisposed to convict.

(d) Petitioner's defense at trial consisted entirely of evidence of good character and reputation. The Trial Court instructed the jury, on several occasions, that evidence of good character could be applied only to the issue of innocence or acquittal. Petitioner can find no such statutory limitation, and such a narrow application of evidence of good reputation is neither realistic or just; if good character, as instructed by the Court, could, in itself, preclude a jury from finding Petitioner could kill, it could preclude the same jury from finding a state of mind capable of malice and/or intent to kill. If a juror assumed that the burden was on Petitioner to rebut the presumption of malice and intent to kill referred to previously, then the

Trial Court's instructions that his only evidence in defense could not be applied to rebut malice and/or intent, but only guilt, unconstitutionally prejudiced Petitioner's cause.

(e) Although Voluntary Manslaughter is a lesser included offense in a Pennsylvania murder indictment, the Trial Court initially — and emphatically — instructed the jury, despite Petitioner's argument for such a verdict, that "there is nothing in this case that would allow you to bring in a verdict of Voluntary Manslaughter. There is no evidence of any sufficient cause of provocation. . . ." The Court, on at least three *later* occasions, emphasized that there was no evidence of "legally adequate" provocation to warrant a verdict of manslaughter, but that this was the opinion of the Court and that the jury was not bound by that opinion and had the right to return such a verdict. Petitioner does not dispute the Court's right to state its opinion *fairly* if it does not, as did the first instruction stated above, remove the jury's right to return a verdict of Voluntary Manslaughter. Petitioner does contend that for the Trial Judge, as the courtroom's undisputed symbol and source of the law, to emphasize his opinion on at least four different occasions that there was no evidence of legally adequate provocation, while never defining either "legally adequate" or "sufficient" provocation, to warrant a verdict of Voluntary Manslaughter, was harmful error.

The Trial Court also stressed that there had been no evidence presented to reduce or mitigate malice to manslaughter. This is error because, by definition, a malicious killing cannot be *reduced* to manslaughter. But, again, the Trial Court did not instruct the jury that the burden of providing such evidence was not on Petitioner. The Court had removed Petitioner's only evidence from consideration by its instructions regarding good reputation. Petitioner con-

tends that a fair and impartial jury may have determined from the Commonwealth's evidence and from his evidence of good character—if permitted to consider it for *degree* of guilt, that (i) Petitioner had quickly surrendered to—and cooperated with—the state police, (ii) the victim had voluntarily accepted a ride from Petitioner whom she knew, (iii) an argument ensued that unjustifiably threatened Petitioner, (iv) he acted out of uncontrollable anger and fear in a multi-faceted attack of hitting, slashing and choking consistent with provocation, fear and anger, (v) in a panic, he had left the victim breathing and obviously alive (for as much as thirty minutes) and drove by witnesses in a weaving and erratic fashion, and (vi) his good reputation was such so as to preclude his actions with malice and/or intent, all of which was evidence from which provocation and passions such as anger and fear could have been inferred by a reasonable juror. These inter-related instructions denied Petitioner a fair and impartial trial by jury.

(f) Finally, it was unnecessary and prejudicial for the Trial Court to include in its instructions to the jury that the Court had affirmed *all* points for charge submitted by the Commonwealth but had denied *all* of Petitioner's points for charge. Petitioner does not possess a copy of either of those points for Charge; however, there could be no possible relevance in the above instruction and it could only serve to prejudice the jury against Petitioner. The instruction that the Commonwealth had "charged" that Petitioner had maliciously killed the victim, with no further explanation by the Court regarding "points for charge", would imply to the jury that only the points and arguments—and "charge"—presented by the Commonwealth had merit in the eyes of the law (Court).

In conclusion, Petitioner contends that these instructions, read as a whole, prejudiced his right to a fair and impartial trial *by jury*, especially when given the biased jury as previously described. (For additional information, refer to the accompanying brief.)

13. All claims for relief stated above were presented to the Trial Court and the Pennsylvania Supreme Court. Although defense counsel *specifically* objected to the Court's charge only regarding the instructions described in 12-C (a) (e) above, a *general* objection to the charge was made by counsel. However, the Pennsylvania Supreme Court held that the charge, read in its entirety, removed nothing from the province of the jury and, therefore, was proper.

14. Petitioner has no petition or appeal now pending in any court, either state or federal, as to the judgement here under attack.

15. The following attorneys represented Petitioner in the various stages of the judgement attacked herein:

At preliminary hearing: David Blakely; DuBois, Pennsylvania.

At arraignment and plea: Homer W. King; Pittsburg, Pa.

At trial: Homer W. King; Pittsburg, Pa.

At sentencing: David Blakely; DuBois, Pa.

On appeal: Homer W. King; Pittsburg, Pa.

16. Petitioner stands convicted of only one count of one indictment—murder of the first degree.

17. Petitioner has no future sentence to serve after completing the sentence imposed by the judgement under attack herein.

WHEREFORE, Petitioner prays that the court grant Petitioner relief to which he may be entitled in this procedure.

Executed at: Camp Hill; Cumberland County, Pennsylvania.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on: January 5, 1981

(s) Jon E. Yount  
*Petitioner*

**ANSWER TO PETITION FOR WRIT OF HABEAS  
CORPUS****[Caption Omitted]**

AND NOW, comes the Respondents, Superintendent Patton and the Commonwealth of Pennsylvania by Thomas F. Morgan, Esquire, District Attorney of Clearfield County, and F. Cortez Bell, III, Esquire, Assistant District Attorney of Clearfield County, and respectfully answers the Petition for Writ of Habeas Corpus as follows:

***I. Procedural History of Case***

Petitioner was originally arrested on or about April 29, 1966 on charges of Murder and Rape filed to No. 2 May Sessions 1966 in the Court of Quarter Sessions of Clearfield County, Pennsylvania. The case was certified to Oyer and Terminer on September 26, 1966, and proceeded to trial on September 28, 1966, after completion of the selection of a jury. On October 7, 1966, the Petitioner was pronounced guilty by jury verdict of murder of the first degree and rape. The jury further pronounced sentence as life imprisonment. Following denial of post-trial motions, Petitioner appealed from the judgment of sentence to the Supreme Court of Pennsylvania (*Commonwealth vs. Yount*, 435 Pa. 276, 256 A.2d 464 (1969)). The Supreme Court of Pennsylvania reversed the conviction and ordered a new trial on the basis of *Miranda vs. State of Arizona*, 384 U.S. 436 (1966), which had been decided in the period of time between the date of Petitioner's arrest and the date of his trial. The Commonwealth appealed the ruling of the Pennsylvania Supreme



Court with certiorari having been denied at 397 U.S. 925 (1970). Prior to retrial, hearings were held on or about June 4, 1970, July 29, 1970, and August 17, 1970, with regard to Petitioner's pre-trial motions as to Change of Venue and Suppression of Confession and Evidence Obtained Therefrom. The Court by Memorandum and Order filed September 21, 1970, denied the Change of Venue request and indicated that it would be bound by the guidelines as to suppression of evidence as set forth by the Supreme Court of Pennsylvania in its opinion rendered in the instant case found at *Commonwealth vs. Yount*, 435 Pa. 276, 256 A.2d 464 (1969) cert. denied 397 U.S. 925 (1970). A copy of the Lower Court's Memorandum and Order dated September 21, 1970, is attached hereto, incorporated herein and marked as Commonwealth's Exhibit "A". A second Petition for Change of Venue was filed November 13, 1970, during jury selection for the instant case, but was denied by Memorandum and Order of the Court dated November 14, 1970. A copy of the Court's Memorandum and Order is attached hereto, incorporated herein and marked as Commonwealth's Exhibit "B".

Jury selection for the retrial commenced November 4, 1970, with the actual trial beginning on November 17, 1970. On November 20, 1970, the jury in the instant matter returned a verdict of guilty of murder of the first degree. The rape charge was not tried by the Commonwealth at retrial. The jury further returned a sentence of life imprisonment, they being bound by law to impose no higher sentence. Post-Trial Motions were filed November 27, 1970, and were subsequently denied on January 15, 1973, by Opinion and Order of the Court, after awaiting completion of a full trial transcript at defense counsel's request.



A copy of the Court's Opinion and Order is attached hereto, incorporated herein and marked as Commonwealth's Exhibit "C".

The Petitioner was formally sentenced March 26, 1973, and appealed to the Supreme Court of Pennsylvania. That Court by opinion found at *Commonwealth vs. Yount*, 455 Pa. 303, 314 A.2d 242 (1974) affirmed the judgment of sentence.

The Petitioner has filed seven (7) applications to the Pennsylvania Board of Pardons for commutation of life imprisonment to life on parole during the years of 1973, 1975, 1976, 1977, 1978, 1979 and 1980. Each application has been denied. This is Petitioner's first Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. §2254.

## *II. Factual History of Case*

Only the factual history of the case relevant to the present Petition for Writ of Habeas Corpus proceeding will be outlined below.

On April 28, 1966, the body of Pamela Sue Rimer, a senior at DuBois Area High School, who resided near Luthersburg, Pennsylvania was found in a wooded area adjoining a red-dog road leading from her school bus stop to her rural home. The autopsy revealed that the cause of death was due to shock, loss of blood, and strangulation due to an excess of blood in her lungs. Examination revealed numerous wounds about the girl's head caused by a blunt weapon, three slashes across her throat and cuts of the fingers of her left hand, caused by a sharp instrument. When found, the girl's body was not fully clothed, in that one stocking and one shoe had been removed and the stocking tied about her neck.

At approximately 5:45 a.m. on the morning of April 29, 1966, the Petitioner, Jon E. Yount, a teacher at the DuBois Area High School who had the dead girl in one of his classes, presented himself at the Pennsylvania State Police Substation near DuBois, Pennsylvania and advised the desk officer who answered the door, "I am the man you are looking for." (Trial N.T. 250-251, 256-257). The officer asked the Petitioner if he meant that incident in Luthersburg to which the Petitioner responded "Yes". (Trial N.T. 251, 256-257). The officer then asked the Petitioner to enter and be seated. The desk officer then left the Petitioner unattended and proceeded to a back bedroom where he awoke a detective and another officer and informed them as to Petitioner's presence. (Trial N.T. 252, 257-258). After dressing, the detective and second officer entered the front office. At that time, the detective asked Petitioner, "Why are we looking for you?" (Trial N.T. 271). Petitioner responded, "I killed that girl." (Trial N.T. 271). The detective immediately inquired, "What girl?" The Petitioner responded "Pamela Rimer." (Trial N.T. 271). Petitioner was then at that time advised as to his right to counsel, to remain silent, etc., but not of his right to free counsel. This occurred prior to the holding in *Miranda vs. State of Arizona*, 384 U.S. 436 (1966). The Petitioner then proceeded to give two very detailed confessions as to his responsibility for the death of Pamela Sue Rimer in which he fully confessed his guilt.

At the retrial of this case, the Lower Court suppressed all statements and confessions made by the Appellant after he was incorrectly advised of his Constitutional rights under *Miranda*. Only the three specific statements of the Appellant, set forth fully above, were allowed into evidence.

*Answer to Petition for Writ of  
Habeas Corpus*

*III. Answer*

The Respondents would respectfully, based upon the information as summarized in Sections I and II of this response, answer this Petition for Writ of Habeas Corpus as follows:

1. Paragraph 1 of the Petition is admitted, and it is further averred that the full and proper current name of said Court is:

The Court of Common Pleas of Clearfield County  
Clearfield County Court House  
Clearfield, Pennsylvania 16830

2. Paragraph 2 of the Petition is admitted.

3. Paragraph 3 of the Petition is admitted.

4. Paragraph 4 of the Petition is admitted.

5. Paragraph 5 of the Petition is admitted.

6. Paragraph 6 of the Petition is admitted.

7. Paragraph 7 of the Petition is admitted.

8. Paragraph 8 of the Petition is admitted, and it is further averred that appeal was made to the Supreme Court of Pennsylvania to No. 357 January Term, 1973, with opinion filed to *Commonwealth vs. Yount*, 455 Pa. 303, 314 A.2d 242 (1974). Said opinion having been filed January 24, 1974.

9. Paragraph 9 of the Petition would be admitted with regard to the denial of Petitioner's appeal to the Supreme Court of Pennsylvania, and Paragraph 9 would be denied as to the trial court denial of his direct appeal. In this regard, the Respondent would aver that the trial court denied Petitioner's post-trial motions and not his direct appeal.

10. Paragraph 10 is denied as stated. Respondents would aver that Petitioner has also filed seven (7) applications to the Pennsylvania Board of Pardons for commutation of life imprisonment to life on parole during the years of 1973, 1975, 1976, 1977, 1978, 1979 and 1980. Each application has been denied.

11. Paragraph 11 is denied.

12-A. Paragraph 12-A and any sub-paragraphs located thereunder of the Petition are denied. The Respondents would aver that the Petitioner's conviction was not obtained as a violation of his privilege against self-incrimination. Any and all oral statements of the Petitioner which were admitted at trial were so admitted without any violation of Petitioner's *Miranda* or other Constitutional rights. It would be specifically denied that the police had obtained a description of a suspect which quite accurately fit the Petitioner. As indicated in the transcript of the suppression hearing held August 17, 1970, at page 24, investigator Bundy indicated that the description broadcast over the radio described a male individual in his late 20's who was wearing a dark coat with a white shirt and no hat. It would be submitted that this description could fit any number of individuals. Said person was supposed to have been driving a dark green or bluish-green colored station wagon with a chrome rack on the rear. Said individual was not a primary suspect in the case, and the description was broadcast solely because the individual and vehicle were seen driving through the area at the time the crime occurred.

It is further indicated that the investigating officers to whom the Petitioner made any statements were aware that the Petitioner owned or had been driving a vehicle

similar to that in question. The record of the suppression hearing held August 17, 1970, indicates that Detective Kerr was not informed as to the name Jon Yount or the fact that he allegedly owned a station wagon until after the oral statements had been made. (See August 17, 1970 evidentiary hearing transcript, pages 13 & 20; trial transcript pages 275, 277, 285 & 290).

The Respondents would further aver that at the time Petitioner made his voluntary statements to the police which were subsequently admitted into evidence at trial, he was not the prime suspect nor the focus of investigation with regard to the incident.

It would be further averred that at the time the Petitioner appeared at the Pennsylvania State Police substation and indicated to officer Phillips that he was the man they were looking for with regard to the Luthersburg incident, the officer at that time had no knowledge as to who the individual was or why he was there. (Trial transcript—second trial, page 252).

The Respondents would further aver that Tpr. Phillips left the Petitioner alone in the front office while he proceeded to the back bedroom to awaken Tpr. Bedford and Detective Kerr. It would be specifically denied that he did so hurriedly. Respondents would aver that Tpr. Phillips only indicated to Tpr. Bedford and Detective Kerr that there was an individual out front whose identity was unknown to him who indicated that they were looking for him with regard to the Luthersburg incident. (See suppression hearing transcript of August 17, 1970, page 6; trial transcript—second trial, page 252). It would be specifically denied by the Respondents that Tpr. Phillips at any point indicated that he quickly returned to the front

room because he did not want to leave the Petitioner alone. The record is totally devoid of any statements consistent with this allegation. It would be averred that when Tpr. Phillips asked the Petitioner for identification, his wallet and driver's license were voluntarily produced.

The Petitioner alleges that upon entering the room, Detective Kerr and Tpr. Bedford "took him into a small, adjacent office, searched him, confiscated a pocket knife that was in his possession and then asked Petitioner . . ." the various questions which were introduced at trial. The Respondents would specifically deny the above allegation of the Petitioner. The search of the Petitioner and the taking of the pocket knife were done only after the Petitioner had volunteered the statements admitted at trial. (See trial transcript—second trial, pages 265, 267-268, 272 and 273). It would be further denied that the officers took the Petitioner into the small office prior to the time that he voluntarily made the statements introduced at trial. (Trial transcript—second trial, pages 253, 259, 263, 265 and 280). The Respondents would aver that at the time Detective Kerr first approached the Petitioner, he had no knowledge as to his identity or why he was present. Further, he was not in any way a suspect with regard to the incident. (Trial transcript—second trial, page 277; suppression hearing transcript of August 17, 1970, page 2 and 4). The Respondents would aver that the Petitioner was given his rights following the response, "Pamela Rimer."

Petitioner alleges seven items lettered a-h which he feels demonstrate that the officers were aware of why he had gone to the substation and further which he feels left no doubt in his own mind that he was in custody or under arrest. The Respondents would specifically deny each and every one of these allegations as follows:

*Answer to Petition for Writ of  
Habeas Corpus*

(a) Respondents would deny that the description available to the officers precisely fit the Petitioner as he stood before them at the substation. As has been previously averred, the description broadcast was that the individual was male, late 20's, wearing a dark coat with a white shirt and no hat. Respondents would aver that such description does not precisely describe this particular individual, the Petitioner. Respondents would further aver that at the time Petitioner stood before them, the officers had no knowledge that he was in possession of or owned a vehicle matching that which had been seen in the area at the approximate time of the crime.

(b) The Respondents would deny the allegation that the voluntary statements made by Petitioner to Tpr. Phillips at the door of the substation in any way placed the officers on guard that the individual who stood before them was the one who committed the crime. As indicated previously in this Answer, Tpr. Phillips solely indicated to Detective Kerr and Tpr. Bedford that there was an individual in the front office who indicated that they were looking for him with regard to the Luthersburg incident. It would be averred that the officers did not know the individual as a result of his statement to Tpr. Phillips, nor did they know whether he was present as a witness, relative, or just what importance and relevance he had with regard to the case.

(c) It would be specifically denied by Respondents that no other incidents of note occurred in Luthersburg. The Respondents would aver that the DuBois State Police substation had jurisdiction over



parts of a three-county area and whether or not there were any other incidents occurring in the Luthersburg area is not within the knowledge of the Petitioner.

(d) It would specifically be denied by the Respondents that Troopers Phillips, Bedford and Kerr at any point "confiscated" the Petitioner's operator's license prior to the time that he was formally placed under arrest. The testimony with regard to the license was that it was voluntarily given to Trooper Phillips for the purpose of identification and that subsequently, Trooper Bedford and Detective Kerr briefly had it in their possession. Trooper Bedford further indicates that it was his impression or thought that the license had been returned to the Petitioner. The Respondents would aver that at no time was the license retained with the purpose of forcing or even suggesting to the Petitioner that he could not leave.

(e) The Respondents would deny that the Petitioner was taken to the small, adjacent office prior to the time that initial questions were asked of him. The testimony at trial indicates that at least some of the questions were initiated prior to or during the time in which the individuals were moving toward the small, adjacent office. Even if Petitioner's allegation is considered to be true, such allegation does not indicate that Petitioner was a primary suspect, under arrest, in custody or the focus of the investigation.

(f) The Respondents would specifically deny the allegation of the Petitioner that he was searched prior to the time that the statements introduced at trial were made. The testimony at trial specifically indicates that no search of the Petitioner was made until



a later point and time. (Trial transcript — second trial, pages 265, 267-268, 272 and 273).

(g) Respondents would specifically deny that the officers confiscated his pocket knife prior to the time when the oral statements admitted at trial were made. The testimony clearly indicates that the pocket knife was obtained after the statements were made. (See trial transcript—second trial, page 265, as well as the pages indicated in the response to paragraph (f) above.

(h) The Respondents would specifically deny that other police officers were telephoned before the voluntary statements admitted at trial were given. The testimony specifically refutes this allegation. (See suppression hearing transcript, pages 8 and 18; trial transcript—second trial, page 282).

The Respondents would deny that the officers at any time had knowledge as to why Petitioner had appeared at the substation. It is averred that at no time was anything done with regard to the Petitioner such that he would be led to believe or could reasonably believe that he was in custody, under arrest, or the focus of any investigation or was not free to leave the substation prior to the time that the voluntary statements introduced at trial were made. Petitioner alleges that Detective Kerr at one point indicated that he would have used any legal means to keep Petitioner from leaving the substation. The Respondents would aver that in response to defense counsel's questioning at the suppression hearing held August 17, 1970, Detective Kerr testified that if Petitioner had wanted to leave prior to the time that anything had been asked of him, he was free to do so and there was nothing legally which the

detective could have or would have done. (See suppression hearing transcript dated August 17, 1970, page 16). It would be averred that the only time that Detective Kerr indicated that he would have used restraint to assure Petitioner's presence would have been if he had a legal reason to do so. Detective Kerr testified on page 16 that to his knowledge he had no such legal reason. Respondents would admit that Petitioner is correct in stating that without his operator's license he could not legally drive away from the substation. The Respondents would aver, however, that the officers had no knowledge as to the means by which Petitioner had arrived. (Trial transcript—second trial, page 268). The Respondents would further aver as has previously been indicated that the officers believed that Petitioner's license had been returned to him.

Respondents would aver that the statements volunteered by the Petitioner were made solely in response to the officers request as to why they were looking for him. Petitioner was not coerced, prompted or urged to incriminate himself. To the contrary, the detective's inquiry was made in response to information volunteered by Petitioner, was of a neutral character and was not interrogative in nature. It was solely to clarify as to why Petitioner was present. The Respondents would aver that Petitioner's response, "I killed that girl", was freely and voluntarily given. The officer's spontaneous response, "What girl?", was clearly proper, as attempting to clarify an ambiguous, voluntary statement. As such, Petitioner's Response, "Pamela Rimer", was also properly introduced as a voluntary statement not subject to the *Miranda* holding. It would be further averred that Petitioner's responses at all times were voluntarily made, were not the subject of co-

ercion, prompting or interrogative influence. It would be denied that Petitioner, prior to making the statement, "Pamela Rimer", was either the suspect of the investigation, the focus of the investigation, in custody or under arrest. The questions were not part of custodial interrogation, nor were they intended by the officers to elicit incriminating statements.

12-B. Paragraph 12-B and all sub-paragraphs thereunder of the Petition are denied by the Respondents. It would be specifically denied that Petitioner's conviction was obtained in violation of his Constitutional right to select and empanel a fair, impartial and indifferent petit jury. It would be further denied by the Respondents that media coverage in any form interfered with the selection of jurors, the trial of the case by those jurors and the ultimate finding of guilt by the panel. It would be specifically denied by the Respondents that there was continued publicity with regard to Petitioner's appeals before the Pennsylvania Supreme Court or the Commonwealth's attempt to appeal the matter to the United States Supreme Court where certiorari was denied. Petitioner further alleges that during pre-trial motions conducted with regard to the second trial, respective jurors were once again bombarded with prejudicial details. The Respondents would specifically deny this allegation. The transcript of the first pre-trial hearing held June 4, 1970, at page 24, indicates that at least a portion of said hearing and all transcripts of testimony were by Order of the Court impounded and sequestered by the Clerk of the Courts to be placed in his custody and not to be shown to anyone without further Order of the Court. Also on page 24, the Court indicates for the record that from the commencement of the hearing to the

present time "no one has been present in this courtroom except the defendant, his subpoenaed witnesses, the attorneys for the defendant who were self-appointed, the District Attorney and his witnesses and Court attaches permitted to be present under the law." A copy of page 24 is attached hereto as Commonwealth Exhibit "D" and is incorporated by reference as if set forth herein. Respondents would aver that none of Petitioner's counsel's Petitions for Change of Venue contained articles from the media on any of the pre-trial matters. Further, Respondents would specifically deny that the media misrepresented in any way that the Petitioner was to be retried on the charges of murder and rape. Respondents would aver that the trial court properly denied each one of Petitioner's Motions for Change of Venue. With regard to the first Motion for Change of Venue, the only evidence that was placed before the Court was a copy of a newspaper article reporting the decision of the Supreme Court of Pennsylvania without editorial comment of any kind. Said article referred to both the majority opinion and the dissenting opinions of the Court. There was further evidence that a radio talk show in the area had received approximately five telephone calls with regard to the Petitioner's case and that the calls were almost equally split as to pro and con. The only other evidence introduced was that there were occasional telephone calls made to the home of the mother and former wife of the defendant, at which time there would be no one on the other end of the line. The Court in its Opinion and Order which has already been attached hereto as Commonwealth Exhibit "A" indicates that there was insufficient evidence presented to show that a fair, impartial and indifferent jury could not be found and, therefore, properly denied the Motion.

With regard to the second Motion for Change of Venue, which was filed with the Court on or about November 13, 1970, the Respondents would once again deny the Petitioner's allegations that said Motion contained evidence that a Change of Venue motion should have been granted and that the Court abused its discretion in this regard. Petitioner alleges that pre-trial publicity during the voir dire influenced the people of the community to his detriment. The Respondents would respectfully deny this allegation. Petitioner's own exhibits which were submitted within defense counsel's November 13, 1970 Motion show that any and all press coverage was totally unbiased and dealt mainly with the jury selection process. These same exhibits indicate, contrary to Petitioner's allegations, that the community as a whole was not prejudicial nor inflamed as a result of his second trial. The defense exhibits as a result of a thorough reading show that on Wednesday, November 4, 1970, there were just six spectators in the courtroom at the time the case was called for jury selection. The newspaper article further indicates that after the noon recess, said six spectators had dwindled to one. The same exhibits indicate that the press reported on November 6, 1970, that there were no spectators present for the morning session, and that on hand for the afternoon session four women appeared, but two stayed only a short period of time before leaving. The same exhibit of the defense indicates in an article published Saturday, November 7, 1970, that on Friday, November 6, 1970, only four spectators appeared at the courtroom, and even they "trickled in and out of the courtroom." It would be further denied by the Respondents that the number of jurors used in voir dire, or the numbers of jurors excused for cause indicated that the community as a whole had formed fixed opinions

or were prejudicial as to Petitioner's cause. The Court in its Memorandum and Order denying the second Change of Venue motion, as already attached as Commonwealth Exhibit "B", indicates that the number of persons used in voir dire and the number of challenges for cause that were granted was not based upon the fact that they each had fixed opinions, but rather was due to the Court's great leniency to the defendant in their right to examine perspective jurors and granting their challenges for cause. The Court further indicated that in the period of the four years since the date of the first trial, the Court could recall little if any talk in public concerning the matter. The Court in the Memorandum once again places on record its observations as to the number of spectators present in the courtroom throughout voir dire. The Court found that there was insufficient adverse publicity or prejudice throughout the community such that a Change of Venue would be needed in order to secure the empanelling of a fair, impartial and indifferent jury.

Petitioner has submitted to the Court in his appendices various portions of text taken from the voir dire examination of various members of the jury panel. The Respondents would deny that such statements taken out of context indicate fairly the true opinions and feelings of the members of the panel. A distorted picture of the actual testimony of each perspective juror is presented. Respondents would further aver that a reading of the entire voir dire will indicate that the Court did not abuse its discretion in refusing the Motions for Change of Venue. Such a reading will reveal the wide leniency given to defense counsel both in the examination of and the granting of challenges for cause with regard to the panel members. Respondents would aver that with regard to the quotations found in



Petitioner's Appendix A, all but two of the persons indicated were not seated on the panel due to the granting of defendant's challenges for cause or the use of peremptory challenges. With regard to the two persons who were placed on the jury whose quotations are included in Petitioner's Appendix A, the defense did not challenge those persons at all, and, in fact, accepted the persons for the jury. Respondents would further aver that of the twelve persons who were ultimately selected for the jury, nine of such persons were accepted by both sides without challenges of any form. It would be further averred that the mere fact that some of the jurors indicated that they had heard of the case or even that they had formed some opinion is not sufficient to claim that the jury was unfair and could not consider the evidence fairly. It would be averred that not one of the jurors selected had a fixed opinion.

Respondents would deny Petitioner's allegation that the Court made erroneous rulings during the course of voir dire with regard to his challenges for cause. Respondents would aver that the record reflects when read as a whole that the Court was most lenient with regard to granting challenges for cause and that in those cases where the challenges were denied, the Court did not abuse its discretion.

12-C. Paragraph 12-C, as well as every one of its sub-paragraphs (a-f) of the Petition are denied. Since every sub-paragraph develops a separate issue, in and of itself, the Respondent shall answer each one individually below. At the outset, Respondents would aver that although the Petitioner, through his counsel, attempted both before the trial court and the Supreme Court of Pennsylvania to attack the Court's charge to the jury on several

issues, only one specific objection to the Court's charge was made by defense counsel at the time of trial. As such, only that one specific issue could properly be considered by the Lower Court and the Supreme Court of Pennsylvania on appeal. (See Pennsylvania Rules of Criminal Procedure, Rule 1119(b)). The only specific objection made by defense counsel dealt with an allegedly improper expression by the Lower Court as to its opinion that the evidence did not warrant a verdict of voluntary manslaughter. (Trial transcript—second trial, page 438). Therefore, the Respondents would aver that some of the issues raised in Petitioner's Petition for Writ of Habeas Corpus were not properly preserved at the time of trial, and thus, could not be presented properly on appeal to the Supreme Court of Pennsylvania. Respondents by answering said issues below do not concede that said issues are properly before this Court for review.

12-C (a) Paragraph 12-C (a) of the Petition is denied, while the Respondents would aver and admit the said issue was attempted to be raised by defense counsel both on post-trial motions and on appeal, in every instance since the issue was not the subject of the specific objection made at trial, the Courts could not properly review it. The Respondents would deny the Petitioner's allegation that the Court's charge either unduly emphasized or improperly explained murder of the first degree. When read as a whole, the charge did not overly stress any one area; it removed nothing from the providence of the jury, nor did it infer or contain any judicial expression as to Petitioner's guilt with regard to the charge of murder of the first degree. The Respondents would aver that the Court did properly instruct the jury as to the relation-



ship of intention with regard to murder of the first and murder of the second degree.

12-C (b) Paragraph 12-C (b) of the Petition is denied. Once again, while the Respondent would admit that said issue was attempted to be raised by defense counsel both on post-trial motions and on appeal, since it was not the subject of a specific objection as required by the Pennsylvania Rules of Criminal Procedure, the Courts would not review it on appeal. The Respondents would specifically deny that the Court improperly advised the jury with regard to the death penalty. Under the circumstances of this case, any statements with regard to the death penalty were certainly true statements of the law and the jury is entitled and required to be aware of the law pertaining to the case. Respondents would aver that in any event, the Court further instructed the jury specifically that it was not to be concerned with penalty whatsoever and that their only determination was to be as to guilt or innocence. (Trial transcript—second trial, page 439). Respondents would aver that the Court's charge to the jury in this regard was not prejudicial to the Petitioner, nor does it constitute an erroneous instruction.

12-C (c) Paragraph 12-C (c) of the Petition is denied. The issue as to presumption of fact, presumption of law and the shifting of any burdens during trial were never raised in any of defense counsel's post-trial motions, post-trial briefs and briefs or argument before the Supreme Court of Pennsylvania. Nor was the issue the subject of a specific objection at the time of trial. As such, it has never been asserted on

appeal. Respondents by answering this issue reserve their right to assert that the issue is not properly before this Court, it having never been asserted on appeal. Respondent would aver that the Court did properly instruct the jury as to any presumptions that might be inferred from the use of a deadly weapon against a vital part of the body. The Court did properly instruct the jury that such presumption was in fact rebuttable, and the instruction was such that it did not unconstitutionally result in the shifting of any burden of proof to the Petitioner.

12-C (d) Paragraph 12-C (d) of the Petition is denied. The issue as to the use of evidence of Petitioner's good character or reputation was never raised in defense counsel's post-trial motions, post-trial briefs or counsel's brief or argument before the Supreme Court of Pennsylvania. Nor was it the subject of a specific objection at the time of trial. As such, it has never been asserted on appeal. The Respondents by answering said issue below reserve the right to assert that this issue is not properly before the Court for review, as it was never raised on appeal. Respondents would deny that the trial court erred with regard to the jury instructions as to evidence of good character and reputation and its use in regard to jury deliberations. It would be further denied that the instruction when read as a whole placed any burden upon the Petitioner. The Respondents would aver that the trial Court's instructions to the jury when read as a whole with regard to this issue were in fact proper.

12-C (e) Paragraph 12-C (e) of the Petition is denied. Petitioner alleges that the trial court improp-

*Answer to Petition for Writ of  
Habeas Corpus*

erly stated its opinion with regard to the evidence before the jury pertaining to voluntary manslaughter. Such issue was properly raised by specific objection during trial and was therefore dealt with by the Lower Court and the Supreme Court of Pennsylvania on appeal. Respondents would deny that the Court's expression of its opinion was improper and would aver that the charge to the jury with regard to voluntary manslaughter stressed to the members of the jury that they were not in any way bound by his opinion, that voluntary manslaughter was indeed a permissible verdict and that they did in fact have the power to return a verdict of voluntary manslaughter. Petitioner admits that the Court does have a right to state its opinion, so long as such is done fairly. Respondents would aver that when read in total, the jury charge with regard to voluntary manslaughter was in fact fair, and the Court at no time removed consideration of voluntary manslaughter from the providence of the jury. Respondents would specifically deny Petitioner's allegation that by definition a malicious killing cannot be reduced to manslaughter. Respondent would aver that the law is directly contrary to that position. A killing which is committed with malice can, in fact, be reduced to manslaughter. Petitioner alleges that the jury could have inferred from his evidence of good character six specific items (labeled in his Petition as i-vi). Respondents would aver that several of these specific items listed by Petitioner were not at any point a part of the evidence produced at trial by either the Commonwealth or the defense, and, therefore, any evidence as to good character could not bear any relation, nor could it lead the jury to the inferences

which Petitioner alleges. In specific, during the second trial, there was no evidence produced that the victim had voluntarily accepted a ride from the Petitioner whom she knew (Petitioner's ii), that an argument ensued that unjustifiably threatened Petitioner (Petitioner's iii), that he acted out of uncontrollable anger and fear in a multi-faceted attack of hitting, slashing and choking consistent with provocation, fear and anger (Petitioner's iv). Respondents would therefore aver that the trial Court's instructions with regard to malice, good character and reputation were in fact proper.

12-C (f) Paragraph 12-C (f) of the Petition is denied. The issue as to the Court's granting of the Commonwealth's submitted Points for Charge but denial of the Petitioner's Points for Charge was never raised in defense counsel's post-trial motions, post-trial briefs, nor by brief or argument before the Supreme Court of Pennsylvania. Nor was it the subject of a specific objection at the time of trial. As such, the issue has never been asserted on appeal. The Respondents, therefore, by answering this issue within this Petition would reserve the right to assert that the issue is not properly before this Court for review. Petitioner alleges that the trial Court unnecessarily and prejudicially included as part of its instructions to the jury that the Court had affirmed all of the Points for Charge submitted by the Commonwealth, but had denied all of the defense Points for Charge. Respondents would deny that the instructions with regard to requested Points for Charge were improper or prejudicial to the Petitioner in any manner. The Respon-

dent would aver that the Court stated with regard to requested Points for Charge the following: "All of the Commonwealth's Points for Charge are affirmed, but will not be read because covered by the main charge. All of the Points for Charge of the Defendant are refused and, of course, will not be read." (Trial transcript—second trial, pages 437-438). Respondents would further aver that the instructions as indicated above were properly placed on record by the Court in accordance with the Pennsylvania Rules of Criminal Procedure (Pennsylvania Rules of Criminal Procedure, Rule 1119(a)). The Respondents would aver that the statements by the Court with regard to the requested Points for Charge were indeed relevant, were in fact necessary and were not intended or resulted in prejudice to the Petitioner. The Respondents would respectfully aver that the charge of the Court when read in its entirety was imminently fair, removed nothing from the jury's consideration and did not result in any form of prejudice to the Petitioner. The instructions as stated by the Court were not erroneous.

13. Paragraph 13 of the Petition would be admitted in part and denied in part. While Respondents would admit that the claims for relief stated in Paragraphs 12-A, 12-B and 12-C (e)—dealing only with the alleged improper expression of opinion as to voluntary manslaughter by the trial judge during jury instructions as raised by specific objection—have all been raised and appealed to the Supreme Court of Pennsylvania, it would be denied that the substance of Paragraphs 12-C (c), 12-C (d), 12-C (e)—that portion dealing with the use of evidence of good character and reputation in relation to malice—and 12-C (f) have never been asserted either before the trial court or before

the Supreme Court of Pennsylvania. It would be further averred that the substance of Paragraphs 12-C (a) and 12-C (b), although attempted to have been raised on appeal, could not under the Pennsylvania Rules of Criminal Procedure, Rule 1119 (b) been so raised. The issues were waived at time of trial due to failure of counsel to make a specific objection thereto. Therefore, as to Paragraph 12-C (a), 12-C (b), 12-C (c), 12-C (d), 12-C (e)—that portion dealing with the use of evidence of good character and reputation in relation to malice that was not part of the specific objection—as well as 12-C (f), the issues have not fully been litigated within the remedies available to the Petitioner within the Courts of the Commonwealth of Pennsylvania. The Respondents would therefore deny the Petitioner's allegations that such claims have been fully raised on appeal.

14. Paragraph 14 of the Petition can be neither affirmed nor denied by the Respondents, as such is within the sole knowledge of the Petitioner.

15. Paragraph 15 of the Petition would be admitted to the extent stated. Respondents would further aver that the proper and correct name of counsel at preliminary hearing and sentencing is David E. Blakley, instead of David Blakely as Petitioner alleges. It would be further averred that counsel at trial consisted of Homer W. King, Francis V. Sabino and David E. Blakley, and that counsel on appeal was Francis V. Sabino and Harry R. Ruprecht of Harrison, King, Bowman, Sabino and Gillotti, Pittsburgh, Pennsylvania.

16. Paragraph 16 of the Petition is admitted.

17. Paragraph 17 of the Petition is admitted.

*Answer to Petition for Writ of  
Habeas Corpus*

WHEREFORE, the Respondents respectfully request that the Petition for Writ of Habeas Corpus, filed to Civil Action No. 81-234, be dismissed and Certificate of Probable Cause be denied. With respect to Paragraphs 12-A, 12-B and that portion of 12-C (e)—dealing with the alleged improper expression of opinion as to voluntary manslaughter by the trial judge to which specific objection was raised—the Respondents would respectfully request that the Court deny the Petition for Writ of Habeas Corpus on the basis that the allegations lack merit. Respondents would aver that each of these issues have been fully litigated before the Supreme Court of Pennsylvania, and that the decision as made by that Court was indeed proper and fully and accurately applied the prevailing principles of law found both within the Commonwealth of Pennsylvania and the Federal Court system. With regard to Paragraphs 12-C (a), 12-C (b), 12-C (c), 12-C (d), 12-C (e)—that portion dealing with the use of evidence of good character and reputation in relation to malice that was not part of the specific objections raised at trial—as well as 12-C (f), Respondents would assert that the Petitioner has failed to exhaust the remedies available to him in the Courts of the Commonwealth of Pennsylvania. This request is based on 28 U.S.C. Section 2254 (b), wherein it provides that . . .

“An application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that the applicant has exhausted the remedies available in the courts of the State, or that there is either an absence of available State corrective process or the existence of circumstances rendering such process ineffective to protect the rights of the prisoner.”



*Answer to Petition for Writ of  
Habeas Corpus*

335a

Numerous cases within the Federal Court system uphold and embody this same principle that before a state prisoner may seek Federal Court review, he must first present any and all claims to the highest court of the state. *Preiser vs. Rodrigues*, 411 U.S. 475 (1973); *Braden vs. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484 (1973); *United States ex rel. Trontino vs. Hatrack*, 563 F.2d 86 (3d. Cir. 1977).

Therefore, it is our contention that the Petitioner's claims in the Habeas Corpus Petition are either without merit or that the Petitioner has failed to exhaust the remedies available to him in the Commonwealth of Pennsylvania, and it is respectfully requested that the Petition of Jon E. Yount for a Writ of Habeas Corpus be dismissed and Certificate of Probable Cause be denied.

Respectfully submitted,

(s) F. Cortez Bell, III

F. Cortez Bell, III

*Assistant District Attorney*

[Certificate of Service Omitted]



PETITIONER'S TRAVERSE TO RESPONDENTS' ANSWER TO PETITION FOR WRIT OF HABEAS CORPUS

[Caption Omitted]

---

AND NOW, comes the Petitioner, Jon E. Yount, pro se, and for his Traverse to Respondents' Answer and Motion to Dismiss states:

1. ADMITTED.
2. No response necessary because of Respondents' answer.
3. No response necessary because of Respondents' answer.
4. No response necessary because of Respondents' answer.
5. No response necessary because of Respondents' answer.
6. No response necessary because of Respondents' answer.
7. No response necessary because of Respondents' answer.
8. ADMITTED.
9. ADMITTED.
10. DENIED. Petitioner has not filed any petitions, motions or applications with respect to this judgement, other than a direct appeal from the judgement of this conviction and sentence, in any court, state or federal. In their

Paragraph 10, as well as in their Procedural History of Case, Respondents have injected the fact that Petitioner has filed seven unsuccessful applications for clemency with the Pennsylvania Board of Pardons.

Petitioner avers that his applications for mercy to the Board of Pardons, whether granted or denied, are irrelevant to the issues before this Honorable Court. The Board of Pardons is not a "court", either in theory or practice. In the *Board of Pardons, Commonwealth of Pennsylvania*, 1979, as prepared, published and distributed by the Board of Pardons, the Board, at page 2, goes to great lengths to distinguish its function in contrast to that of the judicial system; the Board stresses that legal technicalities are the responsibilities of the courts. "The Board of Pardons does not decide guilt or innocence. The Judicial System has that function!" At page 3 the Board reiterates: "The important point to remember is that the applicant has already been found guilty and sentenced through the judicial process. The Board of Pardons determines whether there are sufficient reasons to recommend mercy." In addition to being irrelevant, the fact that Petitioner's applications have been unsuccessful is insignificant considering that the average time served by men on life sentences in Pennsylvania prior to commutation of sentence is sixteen years.

11. DENIED. Petitioner is being held unlawfully as based on the three grounds specified in Paragraphs 12-A, 12-B and 12-C.

12-A. DENIED. Petitioner's conviction was obtained as a violation of his privilege against self-incrimination; the alleged oral statements of Petitioner, "I killed that girl" and "Pamela Rimer", which were admitted at trial over his objection, were so admitted in violation of

his constitutional rights, especially those mandated by *Miranda*.

Prior to the interrogation of Petitioner that elicited those challenged statements, the state police—including the interrogating officers—had obtained a description of a suspect which quite accurately fit Petitioner. According to retrial testimony, two prosecution witnesses described the driver of an automobile seen near the scene of the homicide as “a man” with “a short haircut and dressed up . . . sports coat and tie and so on” (N.T., page 145) and “a neat man” with “a flat-top . . . neat sideburns . . . a white shirt or very very light colored shirt on and a dark colored coat.” The length of the sideburns were “approximately one-half way down the hair . . . below glass bows . . . the temples . . .” (N.T., page 162). At the first trial, one of these witnesses stated (First Trial N.T., page 151) that he reported what he had seen “to the patrolman at the scene, in a green and white cruiser”. Petitioner fit this description precisely when he appeared at the DuBois Substation of the Pennsylvania State Police on the morning of April 29, 1966, approximately twelve hours after the above information had been given to the state police and broadcast to all police cars *from the DuBois Substation*.

Respondents claim that the man so described was not a suspect when Petitioner was interrogated by the police. Such a claim is not supported by the testimony of witnesses. The individual and vehicle were not *merely* “seen driving through the area at the time the crime occurred”. A witness stated at the first trial (N.T., page 143) that this vehicle was the only one that passed him near the scene of the crime at the time it occurred even though there were usually “quite a few cars go down the road”. This *car and driver* drew the attention of two witnesses by the unusual

and erratic manner in which the car was driven as it left the crime scene (First Trial, N.T., pages 143 and 149; Retrial N.T., pages 145 and 158). Both witnesses spoke with state police officers at or near the scene of the crime; it is inconceivable that this vital information would not have been given to the police at that time. Also, tire tracks were discovered in a field near where the victim's books were found (Retrial, N.T., page 163). When the experienced police officers, who had been at the scene of the crime and had participated in the intense on-going investigation during most of the night, confronted Petitioner in the substation, they certainly had to know why he was there and had focused their investigation on him, especially after he had just allegedly stated—and repeated—that he was the man the police were looking for with regard to the “Luthersburg incident”. It is extremely difficult to believe that Tpr. Phillips would have awakened two other police officers merely to determine why Petitioner was there! ! Respondents deny that there were no other incidents of note in the Luthersburg area, claiming that such information is not within knowledge of Petitioner. However, Tpr. Phillips, communications officer at the DuBois substation, testified at the retrial (N.T., page 256) that to his knowledge, there were no other major incidents that day.

Respondents apparently attach some significance to the fact that Petitioner was “alone in the front office” while Tpr. Phillips awakened Tpr. Bedford and Det. Kerr to take charge of the case. Petitioner avers that the police substation was a relatively small, one-story structure with the front office approximately centrally-located; therefore, Tpr. Phillips was not required to lose sight of Petitioner for more than a few seconds—if at all—while in the hallway to awaken the other officers. Although Respondents spe-

cifically deny that Tpr. Phillips hurriedly returned to the front office—with the inherent implications of such actions—because he did not want to leave Petitioner alone, Tpr. Phillips testified at the first trial (N.T., page 313) that, after awakening the other officers, he did not discuss Petitioner's presence with them further because he "was in a hurry to go to the front room because I left him by himself". At that point, Tpr. Phillips asked Petitioner for identification and obtained his wallet from which the officer extracted Petitioner's operator's license, a procedure inconsistent with the normal police procedure when confronting a non-suspect of having the person remove the license from the wallet himself. Also, despite Respondents' claim to the contrary, Tpr. Bedford testified at the retrial (N.T., page 267) that he could not say if he did or did not return Petitioner's operator's license in the substation. Whether or not the police retained the license to keep Petitioner from leaving the substation is not as relevant to this case as the fact that *Petitioner believed* that such was their purpose in confiscating his license—and his pocketknife.

Petitioner does not believe it necessary to respond at length to Respondents' claim that the alleged oral statements were made in the front office *before* he was *taken* into an interrogation room and searched. As emphasized in his petition and accompanying brief, Petitioner recognizes that the testimony of the police at the retrial (the only reference used by Respondents in support of their claim) was drastically inconsistent with that presented at four previous judicial proceedings in this case. During all previous testimony, the officers involved had consistently stated that Petitioner was taken to a sergeant's office and searched prior to eliciting the challenged oral statements. Also, Respondents aver that Petitioner was given his

"rights"—admittedly inadequate under *Miranda*—following the response "Pamela Rimer". Again, the testimony of Det. Kerr (First Trial, N.T., page 318) destroys that contention. Det. Kerr testified that following the above alleged oral statement, he then asked Petitioner "How did you kill this girl?" and Petitioner allegedly responded "I hit her with a ~~wrench~~ and I choked her." This testimony is significant since it demonstrates that the trial court made an arbitrary decision as to the point in the interrogation that the police were required to give *Miranda* warnings, a decision that is not supported by the reality of the over-all testimony of police officers.

Respondents aver that Petitioner could have departed from the substation prior to questioning and that the police—in their judgement—would have had no legal reason to detain him. The actions of the police officers involved contradict that contention. In addition to Tpr. Phillips' hurried return to the front office, Tpr. Bedford and Det. Kerr were in such a rush to question Petitioner that they took time to dress only in trousers before coming into the front office to confront Petitioner (First Trial, N.T., page 315). Petitioner avers that the interrogating officers had legal means of detaining and restraining him if he had attempted to flee. Of course, if the police really did believe they could not legally detain Petitioner prior to questioning him and eliciting incriminating statements, that may well explain why they resorted to the illegal interrogation challenged herein.

Finally, Petitioner was prompted and urged by the police to incriminate himself; he was interrogated and did not volunteer the alleged oral statements challenged herein; he was the prime suspect in the investigation at that point, in custody and not free to leave the substation when

questioning by police elicited the challenged statements; and, the police did intend to elicit incriminating statements with their specific questions.

12-B. DENIED. Petitioner's conviction was obtained in violation of his constitutional right to select and empanel a fair, impartial and indifferent petit jury. Respondents aver that the publicity surrounding this case from the time of Petitioner's arrest until the completion of voir dire at retrial did not in any form interfere with the selection of jurors, the trial of the case by those jurors or the ultimate finding of guilt by the panel. Although Petitioner has personal knowledge of the publicity surrounding this case from reading newspaper articles, he does not have a complete file of the newspaper, radio and television coverage of this case. Petitioner can only respectfully request this Honorable Court to subpoena, if necessary, the relevant files of the DuBois Courier Express and the Clearfield Progress, the two daily newspapers circulated within Clearfield County, to determine the validity of his allegations regarding publicity during the above defined period. However, Petitioner believes that adequate evidence of the impact of this intense publicity is available by reading the voir dire of this retrial. He avers that one cannot read the voluminous transcript of this voir dire without feeling the prejudice that oozes from the testimony of prospective jurors.

As confirmed by Respondents' "Exhibit B", Petitioner stated in his Petition for Writ of Habeas Corpus that the Trial Court closed certain hearings regarding this case to the public. However, this exhibit in no way alters the fact that newspapers did carry prejudicial information pertaining to this case each time any judicial activity occurred. The Trial Court, as quoted by Respondents from their Ex-



hibit B, indicated that it could not recall much—if any—talk in public concerning this matter. Petitioner avers that his own “Appendix B” counters this contention by quoting the testimony of citizens from all areas of Clearfield County, including those from DuBois, the presiding judge’s city of residence. Respondents aver that the press coverage of this case was totally unbiased. Petitioner contends that frequent references within newspaper articles that he had confessed to this crime, that he had been convicted of murder and rape, and that he had been granted a retrial because of a technicality regarding his confession could not be considered unbiased or unprejudicial. Petitioner does not question the right of the news media to report such information; however, he does contend that in exercising this right the media has infringed upon the right of Petitioner to a fair and impartial trial, the only remedy for such infringement in this case being a change of venue ordered by the Trial Court.

Petitioner admits that there were days when few spectators were evident in the courtroom; but, those were days during which voir dire was conducted, a relatively unexciting procedure during the trial. Such was not the situation during the examination of witnesses. Regardless, interest in the trial—if measured by physical attendance—is not indicative of the existing prejudice against Petitioner that pervaded Clearfield County. Also, it was apparent from the outset of the retrial that the Trial Court did not intend to change venue for any reason. Although continuing to move for change of venue, defense counsel attempted to make the best of a bad situation and to accept jurors who, despite their stated prejudice against Petitioner, it was desperately hoped could hear the case fairly. Respondents emphasize that Petitioner did not challenge for



cause any of the first ten jurors selected. First, as voir dire progressed, the Trial Court's strict criteria for granting challenges for cause became evident; in other words, what prospective jurors the defense had to work with was the best it was going to get in that county. Second, defense counsel was reluctant to challenge a prospective juror for cause if he did not intend to follow unsuccessful challenges with peremptory challenges. Most of the first ten seated jurors were already extremely biased and counsel chose not to challenge them for cause for fear of losing whatever unlikely chance existed that those jurors could put aside their bias. Petitioner was not in a position to squander his twenty-two peremptory challenges on prospective jurors who had been further prejudiced by unsuccessful challenges for cause. Thus, the defense was forced into a no-win situation because of the bias against Petitioner in Clearfield County and the Trial Court's refusal to grant certain challenges for cause. In Respondents' Exhibit B, page 2, the Trial Court states that great leniency was permitted the defense in questioning prospective jurors. Of course, such leniency, if it did exist, was of little benefit to Petitioner if the bias and prejudicial attitudes uncovered by defense counsel's questions were to be ignored by the Court and proper challenges for cause denied.

Petitioner avers that the issue before this Honorable Court is: Should a man have his life put in jeopardy before such a panel rife with admitted prejudice? Petitioner contends that justice requires more! He reiterates that if one juror would have read about and discussed the case and formed an opinion regarding defendant's guilt, a fair trial *may* have been possible; but, with several such jurors, a fair and impartial trial was inconceivable. The Trial Court abused its discretion by not granting Petitioner's motions

for change of venue; in addition, the Trial Court made several erroneous rulings during the course of voir dire with regard to Petitioner's challenges for cause.

12-C. DENIED. Because all issues herein pertain to the Trial Court's prejudicial and harmful charge to the jury, and for reasons stated in Petitioner's Brief that accompanied his Petition for Writ of Habeas Corpus, all issues presented herein are properly before this Honorable Court.

12-C (a). DENIED. The Trial Court's instructions to the jury overemphasized the possible verdict of murder of the first degree and was prejudicial regarding the relationship between intent to kill and murder of the first or second degree. See Respondents' "Exhibit C", pages 8 and 9.

12-C (b). DENIED. Although the Trial Court's instructions regarding the death penalty in this case may have been accurate, the jury was neither entitled nor required to be aware of this aspect of the law; to the contrary, such instructions are specifically forbidden. No subsequent cautionary instruction(s) by the Court could compensate for this prejudicial error.

12-C (c). DENIED. The issue of intent to kill and its inference from the use of a deadly weapon on a vital part of the body has been a major source of contention both at trial and on appeal. Points for Charge were submitted by defense counsel on this issue; all were refused. The Court's instructions did shift the burden of proof regarding intent to kill to Petitioner by not adequately defining the presumptions involved and informing the jury regarding who carried the burden of proof in each instance.

12-C(d). DENIED. The Trial Court erred by instructing the jury that it could not consider Petitioner's evidence of good character to determine *degree* of guilt but could use it only to determine the question of guilt itself. When read as a whole, the Trial Court's instructions pertaining to evidence of good character and reputation as applied to this case were highly prejudicial.

12-C(e). DENIED. The Trial Court improperly and unfairly stated its opinion with regard to the verdict of voluntary manslaughter and to the evidence before the jury pertaining to that possible verdict. By stating its opinion on at least six occasions throughout the charge, two of which were erroneous, the Trial Court effectively removed from the jury voluntary manslaughter as a potential verdict. Given proper instructions by the Court regarding voluntary manslaughter and evidence of good character, and absent the over-emphasis by the Court that voluntary manslaughter was not a justifiable verdict, the jury could have reasonably inferred the six items labeled in the Petition as "i" through "vi" from the evidence presented at trial, and, therefore, could have arrived at a verdict of voluntary manslaughter.

12-C(f). DENIED. The instructions of the Trial Court with regard to requested Points for Charge were improper, prejudicial and harmful to Petitioner. Petitioner avers that the proper procedure for placing on the record a blanket denial of all of a defendant's Points for Charge, without reading them to the jury, would have been to do so out of the hearing of the jury. Without supplementary instructions that would define Points for Charge for the jurors, the most reasonable inference from the Court's instructions would have been that nothing in Petitioner's

case had merit. These instructions were irrelevant, unnecessary, unfair and harmful.

13. DENIED. Because defense counsel stated a general objection to the Trial Court's instructions to the jury, and because the Pennsylvania Supreme Court held that the charge, read in its entirety, removed nothing from the province of the jury in this case, and, therefore, was proper, Petitioner avers that all issues raised in his Petition for Writ of Habeas Corpus are properly before this Honorable Court for the purpose of determining if the instructions, in part or as a whole, were prejudicial to Petitioner, and, therefore, denied him a fair and impartial trial by jury as guaranteed by the Constitution of the United States. If one accepts Respondents' claim that all issues regarding the Court's charge, not specifically objected to by defense counsel, may not be raised on appeal in the Commonwealth's courts, then it follows that Petitioner has exhausted whatever state remedies that are available to him on these issues and that no state corrective processes now exist.

14. No response necessary because of Respondents' answer.

15. ADMITTED. However, Petitioner avers that his chief contact with the law firm of Harrison, King, Bowman, Sabino and Gillotti, on appeal, was Homer W. King, Esq.

16. ADMITTED.

17. ADMITTED.

WHEREFORE, Petitioner respectfully submits that for reasons stated herein as well as in his Petition for Writ of Habeas Corpus, filed to Civil Action No. 82-0234, and

348a

*Traverse to Answer to Petition*

the Brief accompanying that Petition, all his allegations have merit; he prays that his Petition for Writ of Habeas Corpus be granted and that this Honorable Court provide him with whatever relief it deems appropriate and proper.

Respectfully submitted,

(s) Jon E. Yount  
Jon E. Yount, pro se  
P.O. Box 200; C-8297  
Camp Hill, Pa. 17011

Dated: April 2, 1981

[Certificate of Service Omitted]

**ORDER**  
**[Caption Omitted]**

AND NOW, this 16th day of April, 1981, after Jon E. Yount presented a petition for a writ of habeas corpus which he has been granted leave to prosecute in forma pauperis

IT IS ORDERED that the Federal Public Defender is hereby appointed to represent the petitioner;

AND IT IS FURTHER ORDERED that the matter be set for a conference of counsel on April 30, 1981, at 10:00 A.M. before the undersigned United States Magistrate.

(s) Robert C. Mitchell  
*United States Magistrate*

AMENDMENT TO PETITION FOR  
WRIT OF HABEAS CORPUS  
[Caption Omitted]

---

AND NOW comes the Petitioner, Jon E. Yount, by his attorney, George E. Schumacher, Federal Public Defender, and files the following Amendment to the Petition for Writ of Habeas Corpus, and in support of the Petition sets forth as follows:

12-D. Petitioner was denied effective assistance of counsel at all phases of litigation before the Court of Common Pleas of Clearfield County, including pretrial procedures, the trial of the case, post-trial procedures and appeal, and as grounds therefor sets forth as follows:

(1) Defense counsel, Homer W. King, Esq., Francis V. Sabino, Esq., and David E. Blakley, Esq. (hereinafter referred to as defense counsel) did not provide adequate and competent representation.

(2) Defense counsel did not provide the standard of adequacy of legal services that in the exercise of the customary skill and knowledge which normally prevailed at the time and place.

(3) Defense counsel failed to provide effective assistance of counsel under the Sixth and Fourteenth Amendments of the Constitution of the United States.

(4) Examples of the failure of defense counsel to provide adequate and competent representation are as follows:



(a) Defense counsel did not provide the necessary investigation and preparation for the change of venue motions.

(i) Clearfield County was inundated with publicity from newspapers, magazines, radio and television concerning the state proceedings that was not introduced into evidence in support of the Motion for Change of Venue.

(ii) A hearing is requested on the within motion at which time Petitioner will offer into evidence the newspaper publicity that will show that the pre-trial of Yount's trial for first degree murder and rape that took place in September of 1966 (hereinafter the first trial), the trial of the first case, post-trial motions of the first case, the appeals from the first case, the reversal by the Pennsylvania Supreme Court, the scheduling of the case for retrial (hereinafter the second trial) and the second trial were so thoroughly covered by the Clearfield newspapers as to result in public prejudice against him that resulted in his inability to secure a fair trial in Clearfield County.

(iii) The allegations in support of the Motion for Change of Venue and the Affidavit of newspaper publication in support of the change of venue and the evidence of the transcript of proceedings before the Hon. John A. Cherry were so incomplete, that there was inadequate investigation and preparation of the documentation in support of the Motion for Change of Venue.

(iv) The incompetent and inadequate presentation of the evidence in support of the Motion for Change of Venue resulted in a decision of Judge

Cherry on September 21, 1970, denying the motion and relying on the limited supporting data not justifying a change of venue.

(v) The Affidavit pertaining to publication in newspapers of general circulation in Clearfield County pertaining to defendant, Jon E. Yount, filed by Homer W. King on November 7, 1980, begins only with a newspaper publication of November 3, 1970 through November 7, 1970, which said Affidavit is incomplete, both as to the overall publicity since the time of the homicide in 1966 and also as to the specific period of time in question.

(vi) The material submitted to the Court in support of the change of venue motions does not include magazine, radio, television or any other sources of publicity in support of the motions.

(vii) Counsel respectfully requests the right to produce additional evidence in support of this contention at a hearing on this petition at which time documentary evidence will be presented, evidence from the investigator for the Public Defender Office will be presented, and defense counsel that represented Petitioner during the state proceedings will be subpoenaed to testify.

(b) Defense counsel did not provide effective assistance of counsel in the investigation, preparation, and representation at the voir dire proceedings of prospective jurors before the Hon. John A. Cherry that commenced on November 4, 1970 as follows:

(i) In permitting the Petitioner to be referred to as the "Prisoner";

(ii) Questioning of jurors, including their exposure to newspapers, magazines, radio, television, etc.;

(iii) Questioning as to connection with law enforcement officials;

(iv) Making challenges for cause in front of jurors;

(v) Not making challenges for cause of all jurors;

(vi) Inadequate investigation, preparation and questioning of jurors to renew Motion for Change of Venue; and

(vii) Additional testimony and evidence that will be presented at a hearing requested on the within petition that will show ineffective assistance of counsel at the voir dire proceedings which said ineffective assistance of counsel denied Petitioner a fair trial, but also resulted in insufficient evidence in support of a renewed change of venue motion.

(c) Defense counsel did not provide effective assistance of counsel by not requiring all Court proceedings be recorded and transcribed including side bar conferences, in camera conferences, arguments, rulings, and any other matters not appearing of record.

(i) Numerous instances of unrecorded proceedings exist in the transcript provided to the Petitioner; for example, at page 206 of the transcript of the trial, "All counsel approach the bench," but nothing is included as to the reasons for the side bar conference, arguments, or the ruling of the Court.

Another example is at page 255 of the transcript. On other occasions, such as page 254 of the transcript defense counsel's argument at side bar is recorded.

(ii) The same procedure of not reporting certain arguments, conferences and rulings occurred during the voir dire portion of the proceedings; for example, at page 86 of the transcript where the transcript is as follows, "We will now recess for legal discussions and resolve this once and for all. 1:59 p.m. Court recessed. 2:10 p.m. Court reconvened. Defendant in Court." Also at page 155 of the voir dire transcript where the record indicates that "All counsel approach bench," but there is no transcript of the proceedings.

(iii) The most glaring and prejudicial absence of record is contained at page 1063 and 1064 where matters pertaining to the change of venue were presented, argued and ruled upon by the Court and yet nothing appears as a matter of record. All that is indicated is that the defendant's Motion for Change of Venue is denied at page 1064 of the transcript; whereas, evidence of the Petitioner will establish that the change of venue issue was raised by the Court and extensive argument took place.

(iv) Wherefore, Petitioner requests that the Court order the transcript of all unrecorded portions of any pretrial, voir dire, trial or post-trial proceedings including side bar conferences, in camera conferences, arguments, rulings, or any other matters relating to the aforementioned, be ordered transcribed by this Court for the examination and inspection of counsel for Petitioner.

(d) Defense counsel did not provide effective assistance of counsel in regard to the sequestration of witnesses during the trial as follows:

(i) The ruling at the trial was adversely affected by prior incompetent and inadequate representation when defense counsel did not request sequestration at the first trial, nor at the suppression hearing.

(ii) Defense counsel failed to provide a proper motion, reasons, and legal authorities to support the motion.

(iii) Additional evidence and testimony concerning this matter will be presented at the hearing requested on the within petition.

(e) Defense counsel did not provide effective assistance of counsel in objecting to the bias and prejudice of the trial court in requesting that the trial court recuse himself from the case and in raising these issues on appeal. The bias and prejudice of the trial court resulted in the denial to Petitioner of a fair trial and evidence in support thereof is as follows:

(i) The conduct of the trial court in denying the Motion for Change of Venue.

(ii) The conduct of the trial court in the questioning during the voir dire proceedings, rulings, and especially in regard to the change of venue motion that occurred at page 1064 of the transcript of the voir dire proceedings and subsequent conduct of the Court during the final stages of the voir dire when jurors obviously prejudiced to the defendant were nevertheless seated to participate as jurors and alternate jurors.

(iii) It was further demonstrated by the Court during the course of the trial in rulings, questions, arguments with defense counsel.

(iv) This contention of the Petitioner will be supported by evidence and testimony at a hearing requested in support of this motion.

(f) Defense counsel did not provide effective assistance of counsel in the following respects:

(i) In failing to object to erroneous rulings of the trial court during voir dire.

(ii) In failing to object to erroneous rulings of the trial court during the trial of the case.

(iii) In not advising Yount as to the relevancy and purpose of evidence.

(iv) In failing to present expert testimony from a pathologist or forensic pathologist.

(v) In conducting the defense in an argumentative manner to place Petitioner and defense in the worst possible light with the jury by raising unfounded objections on uncontested matters, by cross-examination on matters that were not at issue, in arguing with the Court in the presence of the jury, in not raising contested matters out of the presence of the jury, and in other respects that will be elicited on cross-examination of counsel at the requested hearing and by testimony admitted on behalf of the Petitioner.

(vi) In advising Petitioner not to testify on his own behalf because of the possibility that suppressed evidence might then become admissible.

(vii) In failing to object to erroneous instructions.

(viii) In failing to object to Court's charge on evidence of good character and reputation.

(xix) In failing to object to the Court's charge regarding murder in the first degree as it related to other offenses.

(x) In not objecting to the procedure of the Court in explaining possible verdicts that emphasized prior to the deliberations of the jury the penalties prescribed by law in cases of first degree murder convictions, especially the Court's comment concerning the fact that the death penalty could not be imposed and that the jury was concerned only with the penalties of either "life" or "death".

(xi) In failing to object to the instruction that the person is presumed to intend the natural and probable consequences of his act.

(xii) In failing to object to the charge that the intentional, unlawful and fatal use of a deadly weapon against a vital part of the body gives rise to the presumption that malice and intent to kill existed.

(xiii) In failing to object to the trial court's instructions that Yount's evidence of good character and reputation, could not be applied to rebut malice and/or intent.

(xiv) In failing to object to the charge of the Court concerning a possible verdict of voluntary manslaughter.

(xv) In failing to object to the charge of the Court on provocation and the failure of the Court to charge on "legally adequate" or "sufficient" provocation, to warrant a verdict of voluntary manslaughter.



(xvi) In failing to object to the charge of the Court that there was no evidence presented to reduce or mitigate malice to manslaughter.

(xvii) In failing to object to the charge of the Court regarding Yount's testimony of good reputation.

(xviii) In failing to object to the charge of the Court that all of the points for charge submitted by the Commonwealth had been included in the instruction to the jury and that all of Petitioner's points for charge had been denied.

(xix) In not objecting to prejudicial arguments of counsel for the Commonwealth while they were being made but waiting until the conclusion of the entire argument to object.

(xx) Petitioner reserves the right to present additional examples of incompetency at a hearing requested on the within petition.

15. Paragraph 15 of Petitioner's Petition for Writ of Habeas Corpus is amended to include that he was represented at the trial of his case by Homer W. King, Esq. of Pittsburgh, Pennsylvania, Francis V. Sabino, Esq., of Pittsburgh, Pennsylvania and David E. Blakiey, Esq. of DuBois, Pennsylvania.

Respectfully submitted,

(s) George E. Schumacher  
George E. Schumacher  
*Federal Public Defender*  
*Attorney for Petitioner*

[Certificate of Service Omitted]

ANSWER TO AMENDMENT TO PETITION FOR  
WRIT OF HABEAS CORPUS  
[Caption Omitted]

AND NOW, comes the Respondents, Superintendent Patton and the Commonwealth of Pennsylvania by Thomas F. Morgan, Esquire, District Attorney of Clearfield County, and F. Cortez Bell, III, Esquire, Assistant District Attorney of Clearfield County, and respectfully answers the Amendment to the Petition for Writ of Habeas Corpus as follows:

*I. Procedural History of Case*

The procedural history of the case as set forth in the original Answer to Petition for Writ of Habeas Corpus previously filed in the instant matter is hereby incorporated by reference as if the same were set forth fully herein.

*II. Factual History of Case*

The factual history of the case as set forth in the original Answer to Petition for Writ of Habeas Corpus previously filed in the instant matter is hereby incorporated by reference as if the same were set forth fully herein.

*III. Answer*

The responses and averments set forth in Section III of the original Answer to Petition for Writ of Habeas Corpus previously filed in the instant matter are hereby incorporated by reference as if the same were set forth fully herein.

The Respondents would initially aver that Petitioner's filing of his Habeas Corpus Petition at this late date has

sufficiently prejudiced the Respondents in their ability to respond to the Petition. It would be further averred that Petitioner had knowledge of the grounds upon which said Petition could have been filed prior to the date of the instant Petition's filing. The Respondents would aver that they are prejudiced in responding to the allegations of the Petition, in that witnesses who either testified at trial or participated in the investigation of the case have either died, or their whereabouts are currently unknown. Respondents' averment is based upon Rule 9 (a) of the Rules governing Section 2254 cases in the United States District Court. Respondents would reserve the right to assert that the instant Petition is therefore not properly before this Court and by filing the instant Answer would not waive our right to assert such a claim at a later point.

The Respondents would respectfully answer the Amendment to Petition for Writ of Habeas Corpus as follows:

12-D. Paragraph 12-D, as well as every one of its sub-paragraphs 1-4 (a-f) of the Amendment to the Petition are denied. Since every sub-paragraph develops a separate issue, in and of itself, the Respondents shall answer each one individually below. At the outset, Respondents would aver that the issues raised in Petitioner's 12-D, asserting denial of effective assistance of counsel at all phases of litigation including pretrial procedures, the trials of the case, post-trial procedures and appeals, were never raised in any post-trial motions, post-trial briefs or arguments before the Supreme Court of Pennsylvania nor by Petition under the Post Conviction Hearing Act. As such, the issue has never been presented to any State court for the purpose of review. Respondents would aver that the Petitioner, as to said issue, has failed to exhaust the remedies available

in the courts of the Commonwealth of Pennsylvania or to establish that the State remedies are unavailable or ineffective as required by 28 U.S.C. §2254 (b and c). The issue is not properly before this Honorable Court and should therefore be dismissed. The Respondents, by answering the allegations relating to this issue, reserve their right to assert that the issue is not properly before this Court, it having never been presented to the State Courts for review and ruling.

12-D (1). Paragraph 12-D (1) of the Amended Petition is denied. The issue as to whether or not defense counsel provided the Petitioner with adequate and competent representation was never raised in defense post-trial motions, post-trial briefs, by brief or argument before the Supreme Court of Pennsylvania nor by Petition under the Post Conviction Hearing Act. As such, the issue has never been asserted before the courts of the Commonwealth of Pennsylvania. The Respondents, therefore, by answering this issue within the Amended Petition, would reserve the right to assert that the issue is not properly before this Court for review. Petitioner alleges generally that defense counsel did not provide adequate and competent representation. Respondents would deny this allegation and aver that defense counsel, as evidenced by the record before this Court for review, did in fact provide Petitioner with adequate and competent representation.

12-D (2). Paragraph 12-D (2) of the Amended Petition is denied. The issue as to whether defense counsel provided the standard of adequacy of legal services that in the exercise of the customary skill and knowledge which normally prevailed at the time and place has never been raised in defense post-trial motions, post-trial briefs, by brief or argument before the Supreme Court of Pennsylvania.

nia nor by Petition under the Post Conviction Hearing Act. As such, the issue has never been presented before the Courts of the Commonwealth of Pennsylvania. The Respondents, therefore, by answering this allegation within the Amended Petition, would reserve the right to assert that the issue is not properly before this Court for review. Petitioner alleges generally that defense counsel did not provide that standard of adequacy of legal representation that in the exercise of the customary skill and knowledge which normally prevailed at the time and place may be deemed to be sufficient. Respondents would deny this allegation and aver that defense counsel did in fact provide Petitioner with legal representation which in the exercise of customary skill and knowledge which prevailed at that time and place was adequate, proper and sufficient.

12-D (3). Paragraph 12-D (3) of the Amended Petition is denied. The issue as to whether defense counsel provided the Petitioner with effective assistance of counsel under the Sixth and Fourteenth Amendments of the Constitution of the United States has never been raised in defense post-trial motions, post-trial briefs, by brief or argument before the Supreme Court of Pennsylvania nor by Petition under the Post Conviction Hearing Act. As such, the issue has never been presented before the courts of the Commonwealth of Pennsylvania. The Respondents, therefore, by answering this allegation within the Amended Petition, would reserve the right to assert that the issue is not properly before this Court for review. Petitioner alleges generally that defense counsel failed to provide effective assistance of counsel as called for by the Sixth and Fourteenth Amendments of the Constitution of the United States. Respondents would deny this allegation and aver that defense counsel did in fact provide Petitioner with ef-

fective assistance of counsel as provided under the Sixth and Fourteenth Amendments of the Constitution of the United States.

12-D (4a). Paragraph 12-D (4a), as well as every one of its sub-paragraphs (i-vii) of the Amended Petition are denied. Since every sub-paragraph develops a separate allegation, in and of itself, the Respondent shall answer each one individually below. The allegation that defense counsel did not provide adequate and competent representation to Petitioner by not providing the necessary investigation and preparation for the change of venue motions has never been raised in defense post-trial motions, post-trial briefs, by brief or argument before the Supreme Court of Pennsylvania nor by Petition under the Post Conviction Hearing Act. As such, the issue has never been presented before the courts of the Commonwealth of Pennsylvania. The Respondents, therefore, by answering this allegation within the Amended Petition, would reserve the right to assert that the issue is not properly before this Court for review. Petitioner alleges that defense counsel failed to provide adequate and competent representation to Petitioner by not providing the necessary investigation and preparation for the change of venue motions. Respondents would deny this allegation and aver that the defense counsel did competently research and prepare all necessary change of venue motions. Respondents would demand strict proof of Petitioner's allegations as to the failure of defense counsel to investigate and prepare for the change of venue motions, if this matter proceeds to a hearing on the merits of the allegation.

12-D (4a, i). Paragraph 12-D (4a, i) of the Amended Petition is denied. As indicated above, this issue was never presented by the Petitioner to the State courts for

review. Respondents, by answering the allegation, reserve their right to assert that this issue is not properly before this Court, it not having been asserted previously. Respondents would deny that Clearfield County was "inundated" with publicity concerning the State proceeding. It would be averred that although there was coverage by the newspaper and radio, such was not of the nature so as to deny the Petitioner any of his rights to a fair trial or a fair jury. It would be denied that defense counsel was in any way incompetent by failing to introduce into evidence any other evidence other than that which is already of record. Counsel for Respondents does not have copies of those items which were introduced in support of each motion for change of venue and would demand strict proof of the allegation contained in paragraph 12-D (4a, i) if the matter proceeds to hearing on the merits of Petitioner's claim.

12-D (4a, ii). Paragraph 12-D (4a, ii) of the Amended Petition is denied. As indicated above, the issue was never presented by the Petitioner to the State courts for review. Respondents, by answering the allegation, reserve their right to assert that this issue is not properly before this Court, it not having been asserted previously. Respondents would deny that any newspaper publicity afforded to the State proceedings of Petitioner's case resulted in public prejudice against him. It would be further denied that Petitioner, as a result of such coverage, was denied his right to empanel a fair and impartial jury or to a fair trial. It would be further denied that defense counsel was in any way ineffective by failing to produce all such newspaper evidence during the change of venue motions. Respondents would demand strict proof of Petitioner's allegation contained at Paragraph 12-D (4a, ii) if the matter proceeds to hearing on the merits of Petitioner's claim.



12-D (4a, iii). Paragraph 12-D (4a, iii) of the Amended Petition is denied. As indicated above, this issue has never been presented by the Petitioner to the State courts for review. Respondents, by answering this allegation, reserve their right to assert that the issue is not properly before this Court, it having not been asserted previously. Respondents would aver that the Motions for Change of Venue, the allegations therein, as well as the affidavits in support thereof were complete such that there is no evidence of an inadequate investigation and preparation thereby indicating that defense counsel was ineffective and not competent. Respondents would demand strict proof of the allegations contained in 12-D (4a, iii) if this matter proceeds to hearing on the merits of Petitioner's claims.

12-D (4a, iv). Paragraph 12-D (4a, iv) of the Amended Petition is denied. As indicated above, this issue has never been presented by the Petitioner to the State courts for review. Respondents, by answering this allegation, reserve their right to assert that the issue is not properly before this Court, it not having been asserted previously. Respondents would admit that on September 21, 1970 the Honorable John A. Cherry did issue an Order denying Petitioner's request for a change of venue. Respondents would deny, however, that such Order was issued due to any incompetent and improper presentation of evidence by defense counsel such that Petitioner was denied his right to effective representation. Respondents would demand strict proof of the allegations contained in 12-D (4a, iv) if this matter proceeds to hearing on the merits of Petitioner's claims.

12-D (4a, v). Paragraph 12-D (4a, v) of the Amended Petition is denied. As indicated above, this issue

has never been presented by the Petitioner to the State courts for review. Respondents, by answering this allegation, reserve their right to assert that this issue is not properly before this Court, it not having been asserted previously. Respondents would deny that the affidavit filed November 7, 1970 was incomplete or that it was of such condition that it demonstrated that defense counsel had not done the necessary investigation and preparation for the change of venue motion. Respondents would demand strict proof as to Petitioner's allegation contained in Paragraph 12-D (4a, v) if this matter proceeds to hearing on the merits of Petitioner's claims.

12-D (4a, vi). Paragraph 12-D (4a, vi) of the Amended Petition is denied. As indicated above, this issue has never been presented by the Petitioner to the State courts for review. Respondents, by answering the allegation, reserve their right to assert that this issue is not properly before this Court, it not having been asserted previously. Respondents would deny the allegation that defense counsel did not submit to the Court in support of change of venue motions evidence from radio, television and magazine and therefore was ineffective. Respondents would aver, for example, that the record establishes that defense counsel did introduce evidence as to radio publicity as found in the transcript "On motion to suppress evidence and motion for change of venue" taken June 4, 1970. Pages 46 through 70 of the transcript deal specifically with one incident of radio coverage. Respondents would demand strict proof of the allegation contained in Paragraph 12-D (4a, vi) if the matter proceeds to hearing on the merits of Petitioner's claims.

12-D (4a, vii). Paragraph 12-D (4a, vii) of the Amended Petition may be neither affirmed nor denied by

the Respondents as there is not an allegation contained in said paragraph.

12-D (4b). Paragraph 12-D (4b), as well as every one of its sub-paragraphs (i-vii) of the Amended Petition are denied. Since every sub-paragraph develops a separate allegation, in and of itself, the Respondent shall answer each one individually below. The allegation that defense counsel did not provide effective assistance of counsel in the investigation, preparation and representation of the Petitioner at the voir dire proceedings of prospective jurors before the Honorable John A. Cherry that commenced on November 4, 1970 has never been raised in defense post-trial motions, post-trial briefs, by brief or argument before the Supreme Court of Pennsylvania nor by Petition under the Post Conviction Hearing Act. As such, the issue has never been presented before the courts of the Commonwealth of Pennsylvania. The Respondents, therefore, by answering this allegation within the Amended Petition, would reserve the right to assert that the issue is not properly before this Court for review. Petitioner alleges that defense counsel did not provide effective assistance of counsel at the voir dire proceedings for the second trial. Respondents would deny this allegation and aver that defense counsel did in fact provide adequate representation of Petitioner at all stages of proceedings in this case. Respondents would demand strict proof of Petitioner's allegation contained in Paragraph 12-D (4b) of the Amended Petition if this matter proceeds to a hearing on the merits of the allegation.

12-D (4b, i). Paragraph 12-D (4b, i) of the Amended Petition is denied. As indicated above, this issue was never presented by the Petitioner to the State courts for review. Respondents, by answering the allegation, reserve

their right to assert that this issue is not properly before this Court, it not having been asserted previously. Respondents would deny that permitting the Petitioner to be referred to as "prisoner" during jury selection evidenced ineffective representation of counsel. Respondents would demand strict proof of the allegation made in Paragraph 12-D (4b, i) if the matter proceeds to hearing on the merits of Petitioner's claims.

12-D (4b, ii). Paragraph 12-D (4b, ii) of the Amended Petition is denied. As indicated above, this issue was never presented by the Petitioner to the State courts for review. Respondents, by answering the allegation, reserve their right to assert that this issue is not properly before this Court, it not having been asserted previously. Respondents would deny that defense counsel was ineffective in any manner with regard to the questioning of jurors on voir dire. In specific, it would be denied that defense counsel did not adequately question the jurors with regard to their exposure as to publicity of the case as well as to whether they had established any opinions as a result thereof. Respondents would demand strict proof of the allegations contained in Paragraph 12-D (4b, ii) if the matter proceeds to hearing on the merits of Petitioner's claims.

12-D (4b, iii). Paragraph 12-D (4b, iii) of the Amended Petition is denied. As indicated above, this issue was never presented by the Petitioner to the State courts for review. Respondents, by answering the allegation, reserve their right to assert that this issue is not properly before this Court, it not having been asserted previously. Respondents would deny Petitioner's allegation that defense counsel was ineffective due to his failure to question various jury panel members regarding whether they had any connection to law enforcement officials. Respondents

would aver that in the majority of cases such a question was not necessary due to the responses from the witnesses which had already been given. Respondents would demand strict proof of the allegation contained in Paragraph 12-D (4b, iii) as well as that such an allegation establishes ineffective counsel or that Petitioner was denied a fair trial by his actions, if the matter proceeds to hearing on the merits of Petitioner's claim.

12-D (4b, iv). Paragraph 12-D (4b, iv) of the Amended Petition is denied. As indicated above, this issue was never presented by the Petitioner to the State courts for review. Respondents, by answering the allegation, reserve their right to assert that this issue is not properly before this Court, it not having been presented previously. Respondents would deny the allegation that defense counsel was ineffective and failed to provide Petitioner with proper representation by making challenges for cause in front of the witnesses from the jury panel. Respondents would aver that of the twelve people who were ultimately selected for the jury, nine of such persons were accepted by both sides without challenges for cause or challenges of any form being exercised. Respondents would demand strict proof of the allegation contained in Paragraph 12-D (4b, iv) as well as that such an allegation establishes that defense counsel was ineffective or that Petitioner was denied a fair trial by his actions, if the matter proceeds to hearing on the merits of Petitioner's claim.

12-D (4b, v). Paragraph 12-D (4b, v) of the Amended Petition is denied. As indicated above, this issue was never presented by the Petitioner to the State courts for review. Respondents, by answering the allegation, reserve the right to assert that this issue is not properly before this Court, it not having been presented previously.

Respondents would deny the allegation that because defense counsel did not make challenges for cause as to each of the jurors he may be deemed to be ineffective counsel. Respondents would demand strict proof of the allegation contained in Paragraph 12-D (4b, v), as well as that such an allegation establishes that defense counsel was ineffective or that Petitioner was denied a fair trial by his actions, if the matter proceeds to hearing on the merits of Petitioner's claim.

12-D (4b, vi). Paragraph 12-D (4b, vi) of the Amended Petition is denied. As indicated above, this issue has never been presented by the Petitioner to the State courts for review. Respondents, by answering the allegation, reserve the right to assert that this issue is not properly before this Court, it not having been presented previously. Respondents would deny that defense counsel exhibited inadequate investigation, preparation and questioning of jurors such that he could not properly renew a Motion for Change of Venue. Respondents would demand strict proof of the allegation contained in Paragraph 12-D (4b, vi), as well as that such conduct establishes defense counsel's ineffectiveness, if the matter proceeds to hearing on the merits of Petitioner's claim.

12-D (4b, vii). Paragraph 12-D (4b, vii) of the Amended Petition is denied. As indicated above, this issue has never been presented by the Petitioner to the State courts for review. Respondents, by answering the allegation, reserve the right to assert that this issue is not properly before this Court, it not having been presented previously. Respondents may not specifically deny or affirm the contents of Paragraph 12-D (4b, vii) as there is no specific allegation made therein. Respondents would deny that defense counsel was ineffective as well as that such ineffec-

tiveness resulted in the denial of a fair trial or in the improper presentation of a renewed change of venue motion. Strict proof thereof would be demanded at hearing in the instant matter if the Court deems that a hearing on Petitioner's claim is necessary.

12-D (4c). Paragraph 12-D (4c) as well as its sub-paragraphs (i-iii) of the Amended Petition are denied. Since every sub-paragraph develops a separate allegation, in and of itself, the Respondent shall answer each one individually below. The allegation that defense counsel did not provide effective assistance of counsel by not requiring all court proceedings to be recorded and transcribed has never been raised in defense post-trial motions, post-trial briefs, by brief or argument before the Supreme Court of Pennsylvania nor by Petition under the Post Conviction Hearing Act. As such, the issue has never been presented before the courts of the Commonwealth of Pennsylvania. The Respondents, therefore, by answering this allegation within the Amended Petition, would reserve the right to assert that the issue is not properly before this Court for review. The allegation that defense counsel did not provide effective assistance of counsel by not requiring all Court proceedings to be recorded and transcribed would be denied. Respondents would demand strict proof, if a hearing on Petitioner's claims is held, that such proceeding should have been recorded and transcribed and that the failure of defense counsel to obtain such establishes ineffective assistance of trial counsel as well as denying the Petitioner of his right to a fair trial.

12-D (4c, i). Paragraph 12-D (4c, i) of the Amended Petition is admitted in part and denied in part. As indicated above, this issue was never presented by the Petitioner to the State courts for review. Respondents, by an-



swering the allegation reserve their right to assert that this issue is not properly before this Court, it not having been asserted previously. Respondents would admit that various portions of proceedings dealing with legal argument of counsel did not appear within the transcribed record provided to the Petitioner. Respondents would deny that any unreported or untranscribed portions of the proceeding occurred at page 255 of the transcript. It would be admitted that page 254 of the transcript does in fact contain a transcript of defense counsel's argument at side bar. It would be specifically denied that such omissions from the recorded and transcribed record establish that defense counsel was ineffective or that as a result thereof any of Petitioner's rights were violated or he was denied a fair trial. Strict proof of the allegations made in Paragraph 12-D (4c, i), as well as that such establish ineffectiveness of counsel would be demanded by the Respondents if a hearing is held on the merits of Petitioner's claim.

12-D (4c, ii). Paragraph 12-D (4c, ii) of the Amended Petition is admitted in part and denied in part. As indicated above, this issue was never presented by the Petitioner to the State courts for review. Respondents, by answering the allegation, reserve their right to assert that this issue is not properly before this Court, it not having been asserted previously. Respondents would admit that the record of voir dire does evidence the quotations as set forth in Petitioner's Paragraph 12-D (4c, ii). Respondents would specifically deny that such allegations as stated in 12-D (4c, ii) establish that defense counsel was in any way ineffective or that as a result thereof any of Petitioner's rights were violated or he was denied a fair trial. Strict proof of the allegations made in Paragraph 12-D (4c, ii), as well as that such establish ineffectiveness of counsel, would be de-

manded by the Respondents if a hearing is held on the merits of Petitioner's claim.

12-D (4c, iii). Paragraph 12-D (4c, iii) of the Amended Petition would be admitted in part and denied in part. As indicated above, this issue was never presented by the Petitioner to the State courts for review. Respondents, by answering the allegation, reserve their right to assert that this issue is not properly before this Court, it not having been asserted previously. While Respondents would admit that the record as transcribed does not contain any legal arguments of counsel occurring on or about November 13-14, 1970, it would be specifically denied by Respondents that the venue issue was raised by the Court. Respondents would aver that such motion for change of venue was once again asserted by defense counsel. Respondents would deny that such allegations as stated in 12-D (4c, iii) establish that defense counsel was in any way ineffective or that as a result thereof any of Petitioner's rights were violated or he was denied a fair trial. Strict proof of the allegations made in Paragraph 12-D (4c, iii), as well as that such establish ineffectiveness of counsel, would be demanded by the Respondents if a hearing is held on the merits of Petitioner's claim.

12-D (4c, iv). Paragraph 12-D (4c, iv) of the Amended Petition may be neither affirmed nor denied by the Respondents as there is no allegation contained therein. Respondents would have no objection to the request made by the Petitioner as set forth in Paragraph 12-D (4c, iv).

12-D (4d). Paragraph 12-D (4d) as well as its sub-paragraphs (i-iii) of the Amended Petition are denied. Since every sub-paragraph develops a separate allegation, in and of itself, the Respondent shall answer each one individually below. The allegation that defense counsel did

not provide effective assistance of counsel in regard to the sequestration of witnesses during the trial has never been raised in defense post-trial motions, post-trial briefs, by brief or argument before the Supreme Court of Pennsylvania nor by Petition under the Post Conviction Hearing Act. As such, the issue has never been presented before the courts of the Commonwealth of Pennsylvania. The Respondents, therefore, by answering this allegation within the Amended Petition, would reserve the right to assert that the issue is not properly before the Court for review, it not having been asserted previously. Petitioner alleges that defense counsel did not provide effective assistance of counsel in regard to the sequestration of witnesses during trial. Respondents would deny this allegation and aver that even though defense counsel did fail to sequester witnesses in various proceedings, such is not sufficient to support a claim that counsel was ineffective or to establish that any rights of Petitioner or his right to a fair trial was denied. Respondents would demand strict proof of the allegation contained in Paragraph 12-D (4d), as well as that such conduct establishes defense counsel's ineffectiveness or that Petitioner was denied his right to a fair trial by his actions, if the matter proceeds to hearing on the merits of Petitioner's claim.

12-D (4d, i). Paragraph 12-D (4d, i) of the Amended Petition would be admitted in part and denied in part. As indicated above, this issue was never presented by the Petitioner to the State courts for review. Respondents, by answering the allegation, reserve their right to assert that this issue is not properly before this Court, it not having been asserted previously. Respondents would admit that defense counsel did not request sequestration at the first trial nor at the suppression hearing. It would be averred

that such a request was made at the second trial. Respondents would deny that the fact that witnesses were not sequestered at previous proceedings evidences that defense counsel was ineffective or that Petitioner was denied his right to a fair trial. Respondents would demand strict proof of Petitioner's allegations contained in Paragraph 12-D (4d, i) if the matter proceeds to hearing on the merits of Petitioner's claim.

12-D (4d, ii). Paragraph 12-D (4d, ii) of the Amended Petition is denied. As indicated above, this issue has never been presented by the Petitioner to the State courts for review. Respondents, by answering this allegation, reserve their right to assert that the issue is not properly before this Court, it not having been asserted previously. Respondents would deny the allegation that defense counsel failed to provide a proper motion, reasons and legal authorities to support the motion. Respondents would demand strict proof of the allegations contained in 12-D (4d, ii) if this matter proceeds to hearing on the merits of Petitioner's claims.

12-D (4d, iii). Paragraph 12-D (4d, iii) of the Amended Petition can be neither affirmed or denied by the Respondents as there is no allegation contained therein. As indicated above, this issue was never presented by the Petitioner to the State courts for review. Respondents, by answering this paragraph, reserve their right to assert that this issue is not properly before this Court, it not having been asserted previously.

12-D (4e). Paragraph 12-D (4e), as well as every one of its sub-paragraphs (i-iv) of the Amended Petition are denied. Since every sub-paragraph develops a separate allegation, in and of itself, the Respondent shall answer

each one individually below. The allegation that defense counsel did not provide effective assistance of counsel by objecting to the bias and prejudice of the trial court in requesting that the trial court ~~recuse~~ himself from the case and in raising these issues on appeal has never been raised in defense post-trial motions, post-trial briefs, by brief or argument before the Supreme Court of Pennsylvania nor by Petition under the Post Conviction Hearing Act. As such, the issue has never been presented before the courts of the Commonwealth of Pennsylvania. The Respondents, therefore, by answering this allegation within the Amended Petition, would reserve the right to assert that the issue is not properly before this Court for review. Respondents would deny that defense counsel was ineffective by failing to allege that the trial court was biased or prejudiced or seeking recusal of the trial judge. It would be further denied that the trial court was in any way biased or prejudiced toward the Petitioner and that as a result thereof he was denied his right to a fair jury and trial. Respondents would demand strict proof of Petitioner's allegations contained in Paragraph 12-D (4e), as well as that such establishes ineffective counsel such that Petitioner was denied his rights in any manner.

12-D (4e, i). Paragraph 12-D (4e, i) of the Amended Petition is denied. As indicated above, this issue was never presented by the Petitioner to the State courts for review. The Respondents, therefore, by answering this allegation within the Amended Petition, would reserve the right to assert that the issue is not properly before this Court for review, it not having been asserted previously. Respondents would deny that the trial court in denying the Motions for Change of Venue acted in any manner which exhibited bias or prejudice. It would be specifically de-

nied that the trial court was biased or prejudiced in any way against the Petitioner and that defense counsel was in any manner ineffective for failing to assert such a claim. Respondents would demand strict proof of the allegation contained in 12-D (4e, i), as well as a showing that trial counsel was ineffective in not asserting a claim of bias and prejudice before the lower court and on appeal and that Petitioner was denied a fair trial thereby, if hearing is held on the merits of Petitioner's claim.

12-D (4e, ii). Paragraph 12-D (4e, ii) of the Amended Petition is denied. As indicated above, this issue was never presented by the Petitioner to the State courts for review. The Respondents, therefore, by answering this allegation within the Amended Petition, would reserve their right to assert that the issue is not properly before this Court for review, it not having been asserted previously. Respondents would deny that the trial court exhibited any bias or prejudice with regard to the voir dire proceeding, rulings, change of venue motion and final stages of jury selection. Likewise, it would be denied that defense counsel was ineffective for failing to assert any claims or objections based upon the above assertions. Respondents would aver that the trial court's questioning during voir dire, its rulings and conduct during the complete voir dire, was in fact proper. Respondents would demand strict proof of the allegations contained in 12-D (4e, ii), if hearing is held thereon, as well as proof that defense counsel by not raising a claim or objection was ineffective counsel such that the rights of the Petitioner were violated.

12-D (4e, iii). Paragraph 12-D (4e, iii) of the Amended Petition is denied. As indicated above, this issue was never presented by the Petitioner to the State courts for review. The Respondents, therefore, by answering this



allegation within the Amended Petition, would reserve their right to assert that the issue is not properly before this Court for review, it not having been asserted previously. Respondents would deny that the trial court during the course of trial in rulings, questions or arguments with defense counsel exhibited any conduct such as would show bias or prejudice toward the Petitioner or which would result in the denial of any of his rights. Likewise, it would be denied that defense counsel was ineffective in any way for not asserting such a claim by objection or on appeal. Respondents would demand strict proof of Petitioner's allegations set forth in paragraph 12-D(4e, iii), as well as that defense counsel was ineffective by not asserting a claim thereon.

12-D(4e, iv). Paragraph 12-D(4e, iv) of the Amended Petition can be neither affirmed nor denied by the Respondents as there is no allegation contained therein. As indicated above, this issue was never presented by the Petitioner to the State courts for review. Respondents, by answering this paragraph, reserve their right to assert that this issue is not properly before this Court, it not having been asserted previously. Respondents would generally deny that the trial court was biased or prejudiced in any way; that defense counsel was ineffective for failure to assert such a claim; and that Petitioner as a result of the Court's and counsel's actions was denied his rights with regard to a fair trial and a fair jury. Respondents would demand strict proof thereof if hearing is held on the merits of Petitioner's claim.

12-D(4f). Paragraph 12-D(4f), as well as every one of its sub-paragraphs (i-xx) of the Amended Petition are denied. Since every sub-paragraph develops a separate allegation, in and of itself, the Respondent shall answer



each one individually below. The allegations that defense counsel did not provide effective assistance of counsel in the various respects listed specifically in sub-paragraphs (i-xx) has never been raised in defense post-trial briefs, by brief or argument before the Supreme Court of Pennsylvania nor by Petition under the Post Conviction Hearing Act. As such, the issue has never been presented before the courts of the Commonwealth of Pennsylvania. The Respondents, therefore, by answering these allegations within the Amended Petition, would reserve the right to assert that the issue is not properly before this Court for review, it not having been previously asserted. Respondents would deny that defense counsel was ineffective with regard to these areas set forth in sub-paragraphs (i-xx). Strict proof thereof would be demanded if hearing on the merits of Petitioner's claim is held.

12-D (4f, i). Paragraph 12-D (4f, i) of the Amended Petition is denied. As indicated above, this issue was never presented by Petition to the State courts for review. Respondents, by answering this paragraph, reserve their right to assert that this issue is not properly before this Court, it not having been asserted previously. Respondents would deny the allegation that defense counsel was ineffective for failing to object to alleged erroneous rulings of the trial court during voir dire. Respondents would aver that the rulings of the trial court during voir dire were in fact proper and that defense counsel was not ineffective for failing to raise objections thereto. Respondents, if the instant matter proceeds to hearing, would demand strict proof of the allegations made in Paragraph 12-D (4f, i), as well as that defense counsel was ineffective for failure to raise an objection and that Petitioner was denied his rights to a fair trial and jury by counsel's actions.

12-D (4f, ii) . Paragraph 12-D (4f, ii) of the Amended Petition is denied. As indicated above, this issue was never presented by Petitioner to the State courts for review. Respondents by answering this paragraph, reserve their right to assert that this issue is not properly before this Court, it not having been asserted previously. Respondents would specifically deny that the trial court made erroneous rulings during the course of the trial. It would be further denied that trial counsel was ineffective for failing to raise objections to such alleged erroneous rulings. Respondents would demand specific proof of such allegations as well as that the failure of defense counsel to object exhibited ineffective assistance of counsel such that the Petitioner was denied his Constitutional rights.

12-D (4f, iii) . Paragraph 12-D (4f, iii) of the Amended Petition is denied. As indicated above, this issue was never presented by Petitioner to the State courts for review. Respondents, by answering this paragraph, reserve their right to assert that this issue is not properly before this Court, it not having been asserted previously. Respondents are not personally aware as to what defense counsel did or did not advise the Petitioner regarding the trial. It would be specifically denied, however, that failure of defense counsel to advise Petitioner as to the relevancy and purpose of evidence constituted ineffective representation of counsel such that Petitioner was denied any of his Constitutional rights. Strict proof thereof would be demanded by the Respondents if this matter proceeds to the point of a hearing on the merits of Petitioner's claim.

12-D (4f, iv) . Paragraph 12-D (4f, iv) of the Amended Petition would be denied. As indicated above, this issue was never presented by Petitioner to the State courts for review. Respondents, by answering this para-

graph, reserve their right to assert that this issue is not properly before this Court, it not having been asserted previously. Respondents would deny that defense counsel was ineffective by failing to present expert testimony from a pathologist or forensic pathologist. Respondents would aver that at the first trial of Petitioner such an expert was called to testify. Defense counsel did have an expert examine the Commonwealth evidence. It would be denied that defense counsel was ineffective for failing to call such a witness to testify at the second trial of Petitioner. Respondents would demand strict proof of the allegations contained in Paragraph 12-D (4f, iv), as well as that such if established shows that defense counsel was ineffective such that Petitioner's Constitutional rights were violated.

12-D (4f, v). Paragraph 12-D (4f, v) of the Amended Petition is denied. As indicated above, this issue was never presented by Petitioner to the State courts for review. Respondents, by answering this paragraph, reserve their right to assert that this issue is not properly before this Court, it not having been asserted previously. Respondents would deny that defense counsel conducted himself throughout trial in such a manner as to result in Petitioner being denied effective assistance of counsel or being denied any of his Constitutional rights. Respondents would specifically deny that defense counsel did not properly represent Petitioner during the course of trial. Strict proof of the allegations made in Paragraph 12-D (4f, v) would be demanded by the Respondents if the instant matter proceeds to hearing on Petitioner's claims.

12-D (4f, vi). Paragraph 12-D (4f, vi) of the Amended Petition is denied. As indicated above, this issue was never presented by Petitioner to the State courts for review. Respondents, by answering this paragraph, reserve

their right to assert that this issue is not properly before this Court, it not having been asserted previously. Respondents would deny that defense counsel may be deemed to have been ineffective for advising Petitioner not to testify at trial because of the possibility that suppressed evidence might then become admissible. Respondents have no personal knowledge as to exactly what defense counsel did or did not advise Petitioner. Strict proof of the allegations contained in Paragraph 12-D (4f, vi), as well as that such establish defense counsel's ineffectiveness and that such resulted in Petitioner's Constitutional rights being violated would be demanded by Respondents if this matter proceeds to hearing on Petitioner's claim.

12-D (4f, vii). Paragraph 12-D (4f, vii) of the Amended Petition would be denied. As indicated above, this issue was never presented by Petitioner to the State courts for review. Respondents, by answering this paragraph, reserve their right to assert that this issue is not properly before this Court, it not having been asserted previously. Respondents would deny that the trial court gave erroneous instructions. Likewise, Respondents would deny that defense counsel was ineffective by failing to raise objection to such alleged erroneous instructions. Respondents would aver that the instructions given by the trial court were in fact proper. Respondents would demand strict proof of Petitioner's allegations contained in Paragraph 12-D (4f, vii), as well as that such establish that defense counsel was ineffective or that Petitioner was denied his Constitutional rights as a result thereof.

12-D (4f, viii). Paragraph 12-D (4f, viii) of the Amended Petition would be denied. As indicated above, this issue was never presented by Petitioner to the State courts for review. Respondents, by answering this para-

graph, reserve their right to assert that this issue is not properly before this Court, it not having been asserted previously. Respondents would deny that the trial court's charge on evidence of good character and reputation was erroneous. Respondents would further deny that defense counsel was ineffective by failing to object to such allegedly erroneous instructions, as well as that such failure to object establishes that Petitioner was denied any of his Constitutional rights as a result thereof. Respondents would demand strict proof, if the matter proceeds to hearing, as to the allegations made in Paragraph 12-D (4f, viii), as well as to the assertion that such establishes that defense counsel was ineffective and that Petitioner was denied his Constitutional rights as a result thereof.

12-D (4f, ix). Paragraph 12-D (4f, ix) of the Amended Petition would be denied. As indicated above, this issue was never presented by Petitioner to the State courts for review. Respondents, by answering this paragraph, reserve their right to assert that this issue is not properly before this Court, it not having been asserted previously. Respondents would deny that the trial court erred in any regard with regard to the instructions to the jury. It would be specifically denied that the trial court erred in its instructions with regard to murder of the first degree as it related to other offenses. Respondents would further deny that defense counsel was ineffective by failing to object to the Court's charge regarding murder of the first degree as it related to other offenses. Strict proof of the allegations made in Paragraph 12-D (4f, ix), as well as that such establishes defense counsel's ineffectiveness and thereby denied Petitioner his Constitutional rights, would be demanded by Respondents if the matter proceeds to hearing on the merits of Petitioner's claim.

12-D (4f, x) . Paragraph 12-D (4f, x) of the Amended Petition would be denied. As indicated above, this issue was never presented by Petitioner to the State courts for review. Respondents, by answering this paragraph, reserve their right to assert that this issue is not properly before this Court, it not having been asserted previously. Respondents would deny that the trial Court committed error in its explanation to the jury of the possible verdicts which indicated the penalties prescribed by law in cases of first degree murder convictions. It would be further denied that the Court's comment, that indicating that the death penalty could not be imposed in this case, was in error. It would be specifically denied that the Court at any point indicated to the jury that they were to be concerned only with the penalties of either "life" or "death". Respondents would deny that defense counsel was ineffective by failing to object to such instructions by the Court, as well as it would be denied that Petitioner was denied his rights as a result of defense counsel's failure to object. Respondents would demand strict proof of the allegations contained in Paragraph 12-D (4f, x) , as well as the assertion that defense counsel was ineffective by failing to object and that Petitioner was thereby denied of his Constitutional rights as a result of counsel's acts.

12-D (4f, xi) . Paragraph 12-D (4f, xi) of the Amended Petition would be denied. As indicated above, this was never presented by Petitioner to the State courts for review. Respondents, by answering this paragraph, reserve their right to assert that this issue is not properly before this Court, it not having been asserted previously. Respondents would deny that the trial court erred with regard to an instruction that the person is presumed to intend the natural and probable consequences of his act. Likewise, it

would be denied that defense counsel was ineffective for failing to object to such an instruction or that Petitioner's rights were violated in any way by defense counsel's actions. Respondents would aver that the instruction given by the trial court was proper. Respondents would demand strict proof of the allegation made in Paragraph 12-D (4f, xi), as well as that such establishes defense counsel's ineffectiveness and that Petitioner's rights were violated as a result thereof.

12-D (4f, xii). Paragraph 12-D (4f, xii) of the Amended Petition would be denied. As indicated above, this issue was never presented by Petitioner to the State courts for review. Respondents, by answering this paragraph, reserve their right to assert that this issue is not properly before this Court, it not having been asserted previously. Respondents would deny that the trial court erred with regard to an instruction that the intentional, unlawful and fatal use of a deadly weapon against a vital part of the body gives rise to the presumption that malice and intent to kill existed. Respondents would further deny that defense counsel was ineffective for failing to object thereto or that Petitioner was denied any rights as a result of defense counsel's actions. Respondents would aver that the trial court's instruction was a proper statement and instruction. Respondents would demand strict proof if the matter goes to hearing of the allegations made in Paragraph 12-D (4f, xii), as well as that defense counsel was ineffective by failing to object to the instruction and that Petitioner's rights were thereby violated.

12-D (4f, xiii). Paragraph 12-D (4f, xiii) of the Amended Petition would be denied. As indicated above, this issue was never presented by Petitioner to the State courts for review. Respondents, by answering this para-



graph, reserve their right to assert that this issue is not properly before this Court, it not having been asserted previously. Respondents would deny that the trial court erred with regard to its instruction in any regard. It would be specifically denied that the trial court instructed the jury that Petitioner's evidence of good character and reputation could not be applied to rebut malice and/or intent. Respondents would aver that the trial court did not give such an instruction and thus defense counsel cannot be claimed or deemed to have been ineffective for his failure to object. Respondents would demand strict proof of the allegation made in Paragraph 12-D (4f, xiii), as well as that defense counsel was ineffective by failing to object and that Petitioner was denied of any right as a result of counsel's actions.

12-D (4f, xiv). Paragraph 12-D (4f, xiv) of the Amended Petition would be denied. As indicated above, this issue was never presented by Petitioner to the State courts for review. Respondents, by answering this paragraph, reserve their right to assert that this issue is not properly before this Court, it not having been asserted previously. Respondents would deny the allegation that the trial court committed any error with regard to instructions to the jury. Respondents would further deny the allegation that defense counsel was ineffective in any regard by failing to object to the Court's charge concerning a possible verdict of voluntary manslaughter and that Petitioner's rights were violated in any way by defense counsel's acts. Respondents would aver that both counsel argued voluntary manslaughter to the jury during closing argument. Defense counsel did properly place those objections he did have with regard to the voluntary manslaughter instruction on the record. Respondents would demand strict proof at

hearing of the allegations made in Paragraph 12-D (4f, xiv), as well as that such establishes defense counsel's ineffectiveness and Petitioner's Constitutional rights were denied as a result of such acts.

12-D (4f, xv). Paragraph 12-D (4f, xv) of the Amended Petition would be denied. As indicated above, this issue was never presented by Petitioner to the State courts for review. Respondents, by answering this paragraph, reserve their right to assert that this issue is not properly before this Court, it not having been asserted previously. Respondents would deny that the trial court erred in any manner with regard to its instructions to the jury. It would be specifically denied that the trial court erred with regard to its instruction on provocation or with regard to any instructions given or the lack thereof on "legally adequate" or "sufficient" provocation to warrant a verdict of voluntary manslaughter. Respondents would deny that defense counsel was ineffective for failing to object to the court's instructions in this regard, as well as to the assertion that Petitioner's rights were violated by defense counsel's action or the Court. Respondents would demand strict proof at hearing, if one is held, as to the allegation contained in Paragraph 12-D (4f, xv), ~~as well as to defense counsel's ineffectiveness by not objecting and the denial of Petitioner's rights by defense counsel's actions and by the Court.~~

12-D (4f, xvi). Paragraph 12-D (4f, xvi) of the Amended Petition would be denied. As indicated above, this issue was never presented by Petitioner to the State courts for review. Respondents, by answering this paragraph, reserve their right to assert that this issue is not properly before this Court, it not having been asserted previously. Respondents would deny that trial counsel failed

to object to the trial court's instruction regarding that there was no evidence presented to reduce or mitigate malice such that murder might be reduced to manslaughter. Respondents would aver that defense counsel entered a specific exemption on record in this regard and as such, he cannot be deemed to be ineffective for failing to object. Respondents would specifically deny that defense counsel was ineffective in this regard or that Petitioner was denied any Constitutional rights as a result of defense counsel's actions. Respondents would demand strict proof, if a hearing is held, as to the allegations made in Paragraph 12-D (4f, xvi), as well as the assertion that defense counsel is thereby ineffective and that Petitioner's rights were violated as a result of counsel's actions.

12-D (4f, xvii). Paragraph 12-D (4f, xvii) of the Amended Petition would be denied to the extent stated. As indicated above, this issue was never presented by Petitioner to the State courts for review. Respondents, by answering this paragraph, reserve their right to assert that this issue is not properly before this Court, it not having been asserted previously. Although Petitioner does not state specifically what instructions the allegations refer to, the Respondents would deny that the Court erred with regard to its charge on Petitioner's testimony of good reputation. Likewise, Respondents would deny that defense counsel was in any manner ineffective by not objecting to such charge as well as deny that Petitioner's rights were in any way violated by his defense counsel's actions. Respondents would, if hearing is held, demand strict proof as to the allegation made in Paragraph 12-D (4f, xvii), as well as the assertion that defense counsel was ineffective by failing to raise an objection and that Petitioner's Constitutional rights were violated thereby.

12-D (4f, xviii). Paragraph 12-D (4f, xviii) of the Amended Petition would be denied. As indicated above, this issue was never presented by Petitioner to the State courts for review. Respondents, by answering this paragraph, reserve their right to assert that this issue is not properly before this Court, it not having been asserted previously. Respondents would deny the allegation as stated. Respondents would aver that the exact language of the Court was: "All of the Commonwealth's Points for Charge are affirmed but will not be read because covered by the main charge. All of the Points for Charge of the defendant are refused and, of course, will not be read." Respondents would deny that the trial court's statement was in error or improperly made. It would be further denied that defense counsel was ineffective for not objecting to the statement as set forth above. It is also denied that Petitioner's rights were in any way violated by defense counsel's conduct or the statement of the Court. Respondents would demand at hearing strict proof of the allegations made in Paragraph 12-D (4f, xviii), as well as the assertion that defense counsel was ineffective due to his failure to object and that Petitioner's Constitutional rights were violated thereby.

12-D (4f, xix). Paragraph 12-D (4f, xix) of the Amended Petition would be denied. As indicated above, this issue was never presented by Petitioner to the State courts for review. Respondents, by answering this paragraph, reserve their right to assert that this issue is not properly before this Court, it not having been asserted previously. Respondents would admit that defense counsel for Petitioner did not object to the Commonwealth's closing until the conclusion thereof. It would be denied, however, that such action

by defense counsel evidences that counsel was in any manner ineffective and that Petitioner's Constitutional rights were in any way violated by the Commonwealth's closing argument or defense counsel's actions. Respondents would demand strict proof at hearing, if one is held, of the allegations made in Paragraph 12-D(4f, xix), as well as the assertion that defense counsel was ineffective and that Petitioner's rights were violated thereby.

12-D(4f, xx). Paragraph 12-D(4f, xx) of the Amended Petition would be denied to the extent stated. As indicated above, this issue was never presented by Petitioner to the State courts for review. Respondents, by answering this paragraph, reserve their right to assert that this issue is not properly before this Court, it not having been asserted previously. Respondents would deny that defense counsel was in any way incompetent and ineffective. Respondents would further deny that Petitioner's Constitutional rights were violated in any manner by defense counsel's actions.

15. Paragraph 15 of the Amended Petition would be admitted only to the extent stated.

WHEREFORE, the Respondents respectfully request that the Petition for Writ of Habeas Corpus filed to Civil Action No. 81-234 be dismissed and Certificate of Probable Cause be denied. With respect to Paragraph 12-D, as well as every one of its subparagraphs 1-4(a-f) of the Amendment to the Petition for Writ of Habeas Corpus, the Respondents would respectfully request that the Court find that such allegations dealing with ineffective counsel were never asserted in defense post-trial motions, post-trial briefs, by brief or argument before the Supreme Court of

Pennsylvania nor by Petition under the Post Conviction Hearing Act. As such, the issue has never been asserted before the courts of the Commonwealth of Pennsylvania. Respondents would aver that Petitioner, as to said issues, has failed to exhaust the remedies available to him in the courts of the Commonwealth of Pennsylvania or to establish that the State remedies are unavailable or ineffective as required by 28 U.S.C. §2254(b & c). The issues are not properly before this Honorable Court and should therefore be dismissed.

Numerous cases within the Federal Court system uphold and embody this same principle that before a state prisoner may seek Federal Court review, he must first present any and all claims to the highest court or the State. *Preiser vs. Rodrigues*, 411 U.S. 475 (1973); *Braden vs. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484 (1973); *United States ex rel. Trontino vs. Hatrack*, 563 F.2d 86 (3d Cir. 1977).

Respondents would further assert that Petitioner, by filing his Habeas Corpus Petition at this late date, has significantly prejudiced the Respondents in their ability to respond to the Petition. It would be further alleged that Petitioner had knowledge of the grounds on which said Petition could have been filed prior to the date of the instant Petition's filing. Therefore, it is Respondent's contention that the Petitioner's claims in the Habeas Corpus Petition and Amendment thereto are either without merit, are sufficiently delayed in assertion such that Respondents cannot competently reply or that the Petitioner has failed to exhaust the remedies available to him in the Commonwealth of Pennsylvania.

It would be respectfully requested that the Petition of Jon E. Yount for Writ of Habeas Corpus and the Amendment thereto be dismissed and that Certificate of Probable Cause be denied.

Respectfully submitted,

(s) F. Cortez Bell, III

F. Cortez Bell, III

*Assistant District Attorney*

[Certificate of Service Omitted]



PETITION TO DISMISS PETITION FOR  
WRIT OF HABEAS CORPUS  
[Caption Omitted]

---

AND NOW, comes the Respondents, Superintendent Patton and the Commonwealth of Pennsylvania by Thomas F. Morgan, Esquire, District Attorney of Clearfield County, and F. Cortez Bell, III, Esquire, Assistant District Attorney of Clearfield County, and respectfully petitions for the dismissal of the Writ of Habeas Corpus filed to the above captioned term and number as follows:

1. Petition for Writ of Habeas Corpus was filed pro se by the Petitioner Jon E. Yount.

2. The Respondents filed an Answer to the Petitioner's pro se petition on or about March 24, 1981.

3. The office of the Federal Public Defender was appointed to represent the Petitioner on or about April 16, 1981. That the office of the Federal Public Defender through George E. Schumacher filed an Amended Petition for Writ of Habeas Corpus on behalf of the Petitioner which was filed on or about July 1, 1981.

4. That the respondents filed an Answer to the Amended Petition for Writ of Habeas Corpus on or about August 14, 1981.

5. That said Petitions for Writ of Habeas Corpus present issues which have never been raised in defense post-trial motions, post-trial briefs, by brief or argument before the Supreme Court of Pennsylvania, nor by Petition under the Post Conviction Hearing Act. As such, the issues have never been presented before the

*Petition To Dismiss Petition  
for Writ of Habeas Corpus*

Courts of the Commonwealth of Pennsylvania. In specific, the issues raised in Petitioner's paragraphs 12-C(a), 12-C(b), 12-C(c), 12-C(d), 12-C(e) — that portion dealing with the use of evidence of good character and reputation in relation to malice that was not part of the specific objections raised at trial — 12-C(f), 12-D, as well as every one of its sub-paragraphs 1-4(a-f) of the Amended Petition. With regard to the above listed paragraphs and in specific with regard to the allegations concerning the ineffective assistance of counsel, none of the issues were raised before the Courts of the Commonwealth of Pennsylvania such that those Courts might have the opportunity to review the issues presented therein.

6. That the Respondents are significantly prejudiced in their ability to respond to the allegations of said Habeas Corpus Petition, in that the Petitioner delayed the filing of the Petition even though the grounds upon which the Petition is based were within the Petitioner's knowledge at an earlier date.

WHEREFORE, the Respondents would respectfully request that the Court dismiss the Petition for Writ of Habeas Corpus and the amendment thereto and deny the issuance of a Writ of Probable Cause, or in the alternative, that the Court dismiss the Petition and the Amendment thereto with regard to those issues raised above which the Petitioner has not previously asserted before the Courts of the Commonwealth of Pennsylvania.

Respectfully submitted,

(s) F. Cortez Bell, III

F. Cortez Bell, III

*Assistant District Attorney*

[Affidavit and Certificate of Service Omitted]

IN THE UNITED STATES DISTRICT COURT FOR  
THE WESTERN DISTRICT OF PENNSYLVANIA

---

[Caption Omitted]

---

Hearing on Petition for  
WRIT OF HABEAS CORPUS

United States Courthouse  
Pittsburgh, Pennsylvania

November 3, 1981

Before: ROBERT C. MITCHELL, Magistrate

Appearances:

For the Petitioner: George E. Schumacher, ESQ.,  
Federal Public Defender, 590 Centre City Tower,  
Pittsburgh, PA 15222

For the Respondent: F. Cortez Bell, III, Esq.,  
Assistant District Attorney, Clearfield County, P.O.  
Box 887, Clearfield, PA 16830

Respondent in person.

[2] PROCEEDINGS

THE COURT: This is the case of Jon E. Yount  
versus Harvey Bartle at Civil Action 81-234.

Sir, are you Mr. Yount?

THE RESPONDENT: Yes, sir.

THE COURT: Mr. Yount, you are represented by Mr. Schumacher; is that correct?

THE RESPONDENT: That's right.

THE COURT: Mr. Bell, you are appearing on behalf of the Commonwealth; is that correct?

MR. BELL: Yes, sir.

THE COURT: Mr. Schumacher, do you want to proceed, please?

MR. SCHUMACHER: Your Honor, a petition for writ of habeas corpus was filed pro se by my client, Jon E. Yount, raising several issues that are presented to this Court today, first of which is that his conviction was obtained by a violation of his privilege against self incrimination through the use of oral statements elicited without required Miranda warnings, the issue there being whether or not statements elicited from him were in violation of his constitutional rights or whether they were voluntary statements made by him.

In addition thereto, the second argument that was raised by Petitioner was the fact that his conviction [3] was obtained in violation of his constitutional right to select and impanel a fair and impartial and indifferent petit jury, and that issue primarily presented the fact that publicity in Clearfield County was of such a nature, from the time of his original trial in 1966 up to and including the selection of the jury in the second trial, which occurred in November of 1970, that he was unable to select a fair and impartial jury in Clearfield County.

The matter further raises the issue of whether or not he was unable to obtain a fair and impartial jury because of the voir dire questioning that took place and, indicating the exposure of the jurors to that publicity, the fact that a substantial majority of those jurors expressed fixed opinions of guilt or innocence and in further answers of the Grand Jury, indicating their knowledge about the facts of the case from various sources, including discussions with other individuals.

An additional element complained of by Petitioner is that there was a violation of his constitutional right to a fair and impartial jury as a result of the Trial Court's prejudicial charge to the jury and because of the fact that it included erroneous instructions.

After the Federal Defender was appointed to represent Mr. Yount, a supplemental petition was filed, with leave of the Court, raising the issue of competency of defense [4] counsel that represented Petitioner at the time of the second trial.

All of these issues are before the Court at this time.

THE COURT: Mr. Bell, do you want to be heard before we begin?

MR. BELL: Your Honor, basically, I would note for the Court that the issues, as Mr. Schumacher has stated, are those that were presented in the various petitions. The Commonwealth, at this point, would just reserve the right to object to various of those items as they come up within the hearing, on the basis they were not exhausted before the State Courts.

THE COURT: Okay. Now, I have not received—and, through inquiry, I assume it cannot be obtained—a copy of the petition of Mr. Yount as the Appellant in the Pennsylvania Supreme Court on the second trial, to determine what issues were presented to the Pennsylvania Supreme Court. I do have a copy of the Appellee's brief, which, I assume, just merely states the converse of the question. Basically, it appears to me that, other than the competency of counsel issue, these issues have been raised in the Pennsylvania Supreme Court. This is just my preliminary reactions to the matters raised here, now.

MR. BELL: Your Honor, I have gone through and [5] made a list of the various items. Obviously, the Miranda issue, or the statement he made, was fully raised.

THE COURT: And that was the basis of the original demand; was it not?

MR. BELL: Yes. The second issue, in regard to the impaneling of a fair and impartial jury, that was also raised before the State Court and was exhausted.

The third matter that was raised before the Court was with regard to the jury instructions of the Court, involving evidence on voluntary manslaughter.

THE COURT: Evidence as to what?

MR. BELL: Evidence as to voluntary—that is under Mr. Yount's petition, that is paragraph 12(c), subparagraph E.

As to all the other issues, the incompetent counsel and those items raised in paragraph 12(c), A through F, and also 12(d)—those items have not been asserted

before and, therefore, due to his failure to exhaust the State Court remedies, we would object to presently speaking of.

With regard to 12(c), subparagraph E, which I indicated was fully exhausted, one was fully exhausted as to the voluntary manslaughter; the other, the Court gave instructions as to the use of evidence of good character, and that issue was not raised before the State Courts.

THE COURT: I assume, in your final brief, [6] you will spell this out very carefully, and, again, we will leave the record open, in case anyone can come up with the copy of the Appellant's petition to the Supreme Court. I have not contacted the Supreme Court here to see if they have it. It is possible they may still have a copy of it.

MR. SCHUMACHER: Your Honor, I have subpoenaed Mr. King as my first witness this morning and have issued to him a subpoena duces tecum, so, perhaps, he has a copy of the brief we could offer into evidence.

THE COURT: Is there any further statement to be made at this time?

MR. BELL: Nothing further from the Commonwealth.

THE COURT: Mr. Schumacher, do you want to proceed?

MR. SCHUMACHER: Your Honor, we have stipulated to the admissibility of Petitioner's Exhibits 1 and 2, each of which contain substantial sub-exhibits, consisting of P1A through P1GGG, and these



documents contain articles that appeared in the Courier Express, a Dubois Pennsylvania, newspaper, and also in the Clearfield Progress, during the period of time from April 29, 1966, up to and including the latest articles that would have appeared on October 10, 1981, for whatever relevancy the Court may determine in deciding the motion.

[7] THE COURT: Okay. Then, we will receive them. They are marked as Exhibit 22?

MR. SCHUMACHER: Yes, sir. They are all marked.

THE COURT: Okay. We will receive them.

MR. SCHUMACHER: In addition, Your Honor, a stipulation has been prepared, some of the items which I believe counsel can stipulate to as a matter of record. Now, I would like to read them, one at a time, with permission of the Court.

Number one: "The population of Clearfield County during 1966 was approximately 77,000 and, during 1970, was approximately 74,619."

MR. BELL: The Commonwealth will so stipulate to that, Your Honor.

THE COURT: All right.

MR. SCHUMACHER: Number two: "The circulation of the Dubois Courier Express, during 1966, was approximately 9,500, and, during 1970, approximately 9,500."

MR. BELL: Once again, the Commonwealth will stipulate to stipulation number two.

MR. SCHUMACHER: Stipulation number three: "The circulation of the Clearfield Progress, during 1966, was approximately 15,100, and, during 1970, approximately 16,250."

[8] MR. BELL: The Commonwealth again, for the record, would agree to that stipulation.

MR. SCHUMACHER: The further portions of the stipulation, Your Honor, deal with the admissibility of the exhibits that the Court has already accepted.

THE COURT: All right. Thank you.

MR. SCHUMACHER: May I proceed with the first witness for the Petitioner?

THE COURT: Would you, please?

MR. SCHUMACHER: Mr. King.

---

HOMER W. KING, called as a witness by and on behalf of the Petitioner, having been first duly sworn, was examined and testified as follows:

*Direct Examination*

BY MR. SCHUMACHER:

Q Would you please state your name for the record, Mr. King?

A I am Homer W. King.

Q And your occupation?

A I am a lawyer, licensed to practice law in the Commonwealth of Pennsylvania and a number of other jurisdictions.

Q And for what period of time have you been licensed to practice law in the Commonwealth of Pennsylvania?

[9] A I graduated from law school in 1947, took the bar exams, and I believe I was first admitted to the Supreme Court early in 1948.

Q What law school was that?

A University of Pittsburgh.

Q And your principal place of business?

A Is in Pittsburgh. My office is in the Frick Building, down the street.

Q And, of course, you are a member of this court?

A I am, indeed.

Q As well as the Court of Common Pleas of Allegheny County?

A I am, indeed.

Q And of other courts in the Commonwealth of Pennsylvania?

A All courts in the Commonwealth of Pennsylvania.

Q Including Clearfield County?

A Including Clearfield County. Well, remember, back in 1966, we did not have statewide practice yet in Pennsylvania, but I was admitted to the court in Clearfield County for the purpose of handling Mr. Yount's case.

Q And were you retained to represent Mr. Yount?

A I was, indeed.

[10] Q Do you recall when that representation began?

A It was not too long after Mr. Yount was arrested and charged with this offense. I would say probably within thirty days after that time. I can't recall the exact date.

Q An article appeared in one of the local newspapers on September 26, 1966, that has been admitted into evidence, indicating that Homer King joined the defense of the case. Would it have been at or about that time?

A It could have been. I can't recall the exact date, but it was—it was not immediately after Mr. Yount was arrested. It was at least thirty days thereafter and could have been a little bit longer than that, but I would—I don't recall the newspaper article to which you referred, but I can visualize that there would be some time lag between the time I would get into the case and then, maybe, would formally enter an appearance, and I don't recall the date I actually entered my formal appearance in Clearfield.

Q Was it before the first trial?

A Oh, it was definitely before the first trial. The first trial, I think, was in about November. I think it was November of '66, and I was definitely in the case before that.

Q And so, then, what was your position, as it [11] related to his defense counsel, or his defense of the case?

A I was chief counsel.

Q And who assisted you in his representation?

A I had one of my office partners, Mr. Frank—Francis Sabino, assisted me; he was from my office. And a lawyer by the name of Blakeley, from Clearfield County, was our local counsel up there. Mr. Blakeley did not really enter into the trial, particularly, as such, but he was there, and we used his office for the purpose of preparing motions and papers and doing all the things that you have to do before you get into court, but Mr. Blakeley was associated for the purpose of the record.

Q So the questioning of witnesses and jurors was primarily conducted by yourself?

A Yes, sir.

Q And I think you indicated the name of the attorney that worked with you was Mr. Sabino?

A Yes, sir.

Q Did he also participate in the conduct of the trial, questioning witnesses and jurors?

A He was there. He was mainly my backup man and handed me the papers and kept tract of who was next, and things like that, the necessary things that you have to do when you have a prolonged trial and have a number of people.

[12] Q Would you explain to the Court the circumstances of your coming to represent Mr. Yount?

A My recollection is that a lawyer from a neighboring county, whose name was Bill McKnight, whom I had known for a number of years, telephoned me and asked if I would be interested in representing

Mr. Yount, and, at that time, I didn't know anything about the case, except, perhaps, I may have seen a newspaper article, and I asked him why he wanted — why he would call me. I am from Pittsburgh, and Mr. McKnight, actually, I think, was from the neighboring county, which was Jefferson County, and he said that Mr. Yount — he had known Mr. Yount's family, and he knew Jon, and he felt that there was no one in Clearfield County, no member of the bar in Clearfield County, who wanted to get into and handle the Yount case, and also, he felt that —

MR. BELL: Your Honor, I object to this. I think we are getting into hearsay matters as to what Mr. McKnight indicated to this individual.

THE COURT: Okay. Mr. Schumacher, let's just confine the testimony.

BY MR. SCHUMACHER:

Q Would you explain the community reaction to you when you arrived in Clearfield County?

A Well, when I first went to Clearfield County, I was not too well received. By that, I mean that people [13] knew, very promptly, who I was. And I stayed in the New Dimeling Hotel, which was right across from the courthouse, and, once I checked into the hotel and they knew I was a lawyer and they knew I would be getting calls from Pittsburgh, and, at that time, there was some newspaper publicity, and so, initially, the people sort of would cross the street when I was coming down one side, as though there was something wrong with me, and I was not too favorably received in the town, initially.

Q Did you continue to familiarize yourself with the newspaper publicity that followed the Yount matter?

A Well, I got a copy of every newspaper that came out, every day. At least, I tried to, and I kept these papers, to get an idea of just what the public reaction and public feeling about this situation was.

Q Did you feel that that publicity in any way impaired Mr. Yount's right to a fair trial?

A I felt that ever since this case began.

Q Would you describe the nature of the publicity?

A Well, the indication was sensational, because Mr. Yount being who he was and being a school teacher and is charged with these particular charges.

Q And they were?

A The charge of rape and murder one, and this [14] made the case sensational, and, without the—well, we felt, without the rape aspect of it, the case would not have been sensational, but that was there, and it was always referred to, and, when the case first began, I remember looking out the window of my hotel, and I could look out from the New Dimeling Hotel right into the courthouse, and the front of the courthouse, there was so many people that you really couldn't get through. In fact, when we went to the courthouse, on the first day, we called over there and had the Sheriff—I can't recall his name at the moment—come and get us and bring us in the back door, because we could not get in the front door. The entire street and the entire pavement, right out-



side the courthouse, was completely filled with people. There must have been over a thousand people there.

Q And did the case continue to attract community attention, as it progressed?

A It did, indeed. The courtroom, as I recall, seated 165 spectators, and every seat was filled, every day. We are talking about the first trial, now.

Q Yes, sir.

A Every seat was filled, every day, and, in fact, Judge Cherry announced, the first day of the trial, that the seats would be given out on a first come, first served basis, and there was no fair bringing your lunch into [15] the courtroom, because they wanted to kick everybody out at noontime, to help air the place out, and every seat in the courtroom was completely filled, every day.

Q And the case continued to be followed by the newspapers?

A My recollection is that, every day, there was some article in the newspaper about the case, every day that the case was in progress.

Q Where would that article appear?

A On the front page.

Q Was it also covered by radio and television stations in Clearfield County or adjoining counties?

A My recollection is that there was — there was something on the radio about it, every evening, and we would try to hear the evening news on the — either the — on the radio or on the TV, and my recollection is

that there was some mention of it at least every day during the progress of the trial.

Q Now, ultimately, then, following the first trial, Mr. Yount was convicted of both charges; is that correct?

A He was.

Q And could you describe for the Court the community reaction to that?

MR. BELL: Objection, Your Honor, if he knows [16] what the community reaction was.

THE COURT: Mr. King, if you know.

THE WITNESS: The general feeling, because it was people in the court—people filled the courtroom when the jury returned. The jury returned in the evening, about seven-thirty, eight o'clock, as I recall, and the courtroom again was filled, and there was—when it was announced that Mr. Yount was, in the jury's words, was guilty as charged, there was applause in the courtroom. Now, that is not the first time that that happened. When the trial first began, I think it was during the first day, it was almost like a Roman circus.

MR. BELL: Objection, Your Honor.

THE COURT: I can ignore that.

Mr. King, you are to continue.

THE WITNESS: What I wanted to say was, on the first day of the trial when I made an objection, if I was overruled, the spectators applauded. If my objection was upheld, they booed.

Judge Cherry called a halt to that, but that is what happened.

BY MR. SCHUMACHER:

Q During the course of that first trial, where were the newspaper reporters located inside the courtroom, if, in fact, they were in the courtroom?

A There was a press table right in front of the [17] Bench. If we can visualize the courtroom as something like Judge Mitchell's room where we are right now, the jury box would have been on the other side, would have been on the judge's right. Then, there was a counsel table right next to the jury, which would be the — which was John Reilly's table, the prosecutor's table. Next to that was another table, where I and Mr. Yount and my team sat, and then, to my right, was another table for the press people, and then, beyond that, on the other side, directly opposite from where the jury box was, were a series of seats where witnesses sat.

Q Was Mr. Yount sentenced at that time, when the verdict of guilty was returned?

A Yes. As soon as the verdict was returned, Judge Cherry sentenced him, right there, and the Judge's comment as to sentencing him was he wanted to get Mr. Yount out of the jurisdiction, and Mr. Yount was sent from Clearfield County, right from the courthouse — he may have stopped back at the jail to get a toothbrush, I don't recall exactly — but John went from the courthouse directly to the Western Penitentiary Classification Center, and Judge Cherry's stated reason was, he said, he didn't want Mr. Yount to remain in Clearfield that night for reasons of safety.

Q Do you recall whether or not there was a crowd [18] outside the courtroom at that time?

A There was, indeed.

Q Do you recall approximately how many people were involved in that?

A I did not count them, but you had to ask them to get—to move aside, in order to get through the crowds, in order to leave and get across the street, back to the hotel.

Q Would you estimate the size of the crowd to be more or less than a thousand people?

A It was less than a thousand, but I would say about 300, 350 people would be a fairly accurate count. The courtroom was filled, so that was 165 people, right there, and then, when we left, they were there, and there were people outside who couldn't get in, and so then, when we all left—"we," meaning myself and Mr. Sabino and some others, and I think Mr. Blakeley was there—and we left, we had to push our way through the crowd, and, when we got out, the crowd stretched all the way over the sidewalk, and the sidewalk outside the courthouse is about—well, it is about 20, 25 feet from where the face of the courthouse, out to the street, so that was all filled, and then the street was filled, and then we crossed and went over the the New Dimeling Hotel.

Q Did you follow the case of Jon Yount following the sentencing?

[19] A I did, indeed.

Q And what was the next course of action you took on his behalf?

A We filed the post-trial motions and also filed an appeal to the Supreme Court.

Q The appeal that was filed to the Supreme Court of Pennsylvania—I would assume that you prepared a brief on that appeal?

A I did, indeed.

Q Sir, when you were subpoenaed to come to court today, I issued a subpoena duces tecum, or the Court did, to bring all your records with you concerning this matter. Did you happen to bring with you the brief you filed to the Pennsylvania Supreme Court?

A I am sorry, I did not. I failed to bring anything. I thought I had already given your office everything I had, but maybe that was overlooked. I didn't notice I was to bring anything. My files on this case—I am sorry to say I could not carry them all, myself, to come down here, so I didn't bring them. I need about three caddies to bring the papers I have on this case.

Q Do you know whether that file contains a copy of the brief to the Supreme Court of Pennsylvania?

A Sitting here, this minute, I couldn't tell you, but I know I prepared and filed one, a rather elaborate [20] one, so I would think I still have a copy, although, over the years, I have given copies of numerous pleadings and copies of legal memoranda I wrote up in this matter to other people, but I believe I should have a copy of the brief. I will be glad to look for it when I go back and see that you get it.

Q But the issues raised in that appeal included an attack on the statement taken from Mr. Yount as being in violation of his constitutional rights; is that correct?

A Yes, sir; that is correct.

Q And was there an attack on the venue or failure to grant a change of venue?

A Yes, there was.

Q What other issues do you recall were raised?

A Well, the—one of the main issues, including of course, the failure to accord Mr. Yount his Miranda protections, was the fact that the Court had refused to grant my demurrer as to the charge of rape, because there was no evidence of any rape, and the Supreme Court of Pennsylvania eventually decided that, so that, when it came time for the second trial, the trial was only on the charge of murder, and there was no evidence of rape, at all, and my demurrer should have been sustained, and the Supreme Court so eventually found.

Q You also raised an issue pertaining to the [21] charge of the Court; is that correct?

A Well, I am sure I objected to everything that the Court did and that I feel was improper, and I can't give them to you verbatim, right at the moment.

Q But the most important aspect of the decision of the Pennsylvania Supreme Court was the fact that the conviction was reversed; is that correct?

A Yes, that is correct, after which the Commonwealth then took an appeal to the Supreme Court of the United States, that the Court refused certiorari.

Q And so, then, the case was returned to Clearfield County for trial?

A That is correct.

Q And, of course, you continued to represent Mr. Yount at that time?

A That is true.

Q And did you have occasion to investigate any publicity that occurred, following the reversal by the Supreme Court of Pennsylvania?

A Well, when you say "investigated," it was perfectly obvious that, when the Supreme Court reversed the conviction and sent the case back for a new trial, this made the front page of the Clearfield papers.

Q But the reaction, in the front page of the Clearfield paper—would you explain to the Court whether that [22] related to the opinion, the dissenting opinion, or what?

A Well, it was peculiar, in my opinion, that the newspaper account of the reversal did not mention the fact that they had—that the Court had eliminated the rape charge, and the newspaper account printed the dissenting opinion and just barely mentioned the fact that it was the dissenting opinion, but they printed the dissenting opinion almost totally and barely mentioned the fact that the conviction had been reversed.

Q Now, the issues that were raised prior to the second trial, which, I believe, occurred in 1970—did that include a request for a change of venue?

A It did, indeed.



Q And what was the reason for that request?

A Well, I felt, at the time of the second trial, as I had also felt at the time of the first trial, that it would be very difficult, if not impossible, for Jon Yount to receive a fair trial in Clearfield County. In fact, in my argument, in the discussion with the Supreme Court, as I recall, I said that, that I didn't want to say Mr. Yount did not get a fair trial, but I was positive that Mr. Yount could get only as fair a trial as Mr. Yount could get in Clearfield County, and so, when the time of the second trial came, I made numerous oral motions for a change of venue and a number of written motions, attaching to my [23] written motion various newspaper accounts that were printed and being printed about the trial.

Q So that that request for change of venue was related to the newspaper coverage that had occurred since the beginning of the case, to the time you were preparing to start the second trial?

A Yes, If you have the docket entries or if you have the papers that were filed and the pleadings for the second trial, why you should have in there numerous affidavits made by me that had newspaper articles attached as exhibits.

Q Was one of the factors you took into consideration, in requesting a change of venue, the prior conviction for first degree murder and rape, in Clearfield County, of Mr. Yount?

A Yes, because, you see, the people in Clearfield County didn't think of this charge against Mr. Yount as just being a murder, it is always a rape-murder, and, even though the charge, the second time, was on-

ly murder, the people kept thinking of it and talking about it as a rape-murder, even though that charge was not there, the charge of rape was not present.

MR. BELL: Objection, Your Honor, unless we can go into the basis on which he is making—the basis on which the people thought rape-murder.

[24] THE COURT: Sustained.

BY MR. SCHUMACHER:

Q Mr. King, were you concerned as to any publicity concerning statements made by Mr. Yount that were admitted in the first trial, that had no longer become admissible because of the ruling of the Supreme Court of Pennsylvania, and, if so, relate to the Court how.

A You say, was I concerned about it? It certainly was part of the trial strategy that this had to be taken into consideration, and this was one of the main considerations in not putting Mr. Yount on the witness stand in the second trial, because, had he been put on the witness stand, then he would have been subject to cross examination, based on his testimony in the first trial, and, if it was done in that way, I was of the opinion, at that time—and I still feel the same way—that the statements that should not have been admitted in the first trial could now be brought in, in some way or another, in the second trial, and so the whole impact of the Supreme Court's ruling, initially, would be negated, if he was allowed to testify in the second trial. But the other reason, the other reason for not putting Mr. Yount on the witness stand in the second trial was that I was convinced that I had reversible er-

ror in the second case by the Court's failure to grant the change of venue, especially since the Court [25] had indicated that it would grant the change of venue if we did not seat a jury within a certain period of time. Keep in mind that, in the second trial, it took two weeks to pick the jury and only one week to try the case. We went through 260-some jurors before we eventually seated 14 in the second trial, and, when these people were interrogated as to their qualifications for jurors, they continually said, "Oh, yes, Mr. Yount, he is the man who—" this came right from the prospective juror—"he is the man charged with rape and murder." This is what they would say.

Q Did the answers to questions by those jurors indicate whether or not many of those jurors had fixed opinions as to the guilt or innocence of Mr. Yount?

A Very definitely.

MR. BELL: Your Honor, we would object, at this point. We do have a voir dire transcript included in the report of this case, and I believe that would speak for itself as to what the jurors indicated.

THE COURT: Your objection is overruled.

THE WITNESS: Yes. The jurors stated very definitely—that is, many of them did—that they had an opinion that was fixed as to Mr. Yount's guilt; none ever said they had a fixed opinion as to his innocence. And then, of course, the next question that is always asked in [26] these situations is, "Is this opinion so fixed that it could not be changed by the evidence that would be presented and the instructions of the Court?" And

a very common response to that question was, "If he can convince us that he is not guilty, why, then, maybe we would believe him." Now, This was a very common response.

BY MR. SCHUMACHER:

Q Did you receive common responses as to whether or not those jurors or potential jurors had read about the case?

A Well, this was one of the questions that was always asked: "Have you known Mr. Yount? Do you know anything about Mr. Yount? Have you read anything about Mr. Yount?" And many of the jurors said yes, they had read the newspaper account, and also, they had read or heard radio and TV accounts, and, on the basis of this, had formed opinions.

Q After you began the selection of the jury and exhausted the first panel without seating a jury, had you arrived at any conclusion as to whether or not, in your opinion, a jury could—of impartial jurors could be impaneled in Clearfield County?

A Yes, I had arrived at an opinion. I did not—my opinion was that an impartial jury could not be impaneled in Clearfield County.

[27] Q After the first panel of jurors were exhausted, and you had not selected an entire jury to seat on the case, another panel was selected; is that correct?

A That is correct.

Q Would you explain to Magistrate Mitchell how that came about?

A We ran through the first panel of potential jurors. I can't recall exactly how many were in that group, but it was about a hundred. Then, there was a backup panel that Judge Cherry had called, and we—then we ran through a big part of those, so, now, we had no more jurors. So, now, the Judge instructed the Sheriff to go out and select talismen from the streets, under the Pennsylvania rule, so we recessed for a day, to permit the Sheriff to go and round up potential jurors. So, when we showed up in court the next day, the first person that I called was the Sheriff, to ask how he had gone about rounding up all of these people, and the Sheriff testified that he and his deputies had gotten on the telephone and called up people whom they thought would be ideal jurors on the Yount case and had asked those people to come in and be jurors. And so I questioned him about this, and he was very frank about it, that this is exactly what he had done. He had just telephoned people, and he had called up mister so-and-so from across town and somebody else from across town, all people, in his opinion, [28] he thought would be good jurors on the Yount case. Whereupon I then entered a challenge to the array, and Judge Cherry agreed this is not the way jurors are to be selected when they must be chosen from the streets, the Pennsylvania rule being that you must go out and get the first people that you can see, and the only qualifications are that they be, at that time, over the age of 21 and be able to read and write, and that had not been done, so—whereupon that entire panel of jurors was then dismissed, and the Sheriff was now instructed to go out and select other jurors, but, this time, the Judge gave the Sheriff specific instructions as to how you are supposed to do

this. You can't really blame the Sheriff. After all, I don't think that this type of situation had ever occurred before in Clearfield County. As a matter of fact, to my knowledge, it is one of the very, very few times in the history of Pennsylvania.

Q As the selection of the jury continued, did you continue to raise your request for a change of venue?

A I did, indeed, because, after you ran through two regular panels and two special panels of jurors, and we still didn't have a jury seated, it was becoming increasingly obvious to me and, I thought, should have been perfectly obvious to everybody else, that the chance of getting any kind of a jury that you could consider impartial was almost non-existent.

[29] Q Did it ever become obvious to the Court?

A In my opinion it did, because we—meaning myself and Judge Cherry and John Reilly—had discussions about this all the time, particularly whenever the Sheriff was told to go out and find some more jurors. This didn't happen once or twice. The Sheriff had to go out and find more people as prospective jurors at least eight or nine times. The first time, we washed them all out, of course, but it was eight or nine times thereafter that the Sheriff had to go out and bring in more people for us to question. And so, towards the end of the jury selection process, when I believe that we had seated maybe seven or eight people, Judge Cherry said that if we did not seat a panel with this next group of talismen that were brought in, he was then going to grant my change of venue. And so, when the next group of prospective jurors came, we

started our questioning and challenging, and then we were down to about four or six people left to question, and it was obvious, then, that if I just used preemptory challenges, we would still not have enough people, enough jurors to seat twelve plus two alternates. And, on that basis, I used preemptory challenges and exhausted my challenges, but—at which time we had seated eleven jurors, whereupon Judge Cherry said, “Well, since we are only three short, I am going to go bring in more people, because maybe we can get a jury now,” which, [30] of course, was a reversal of what he had told us previously.

Q Was the statement of Judge Cherry made a part of the record?

A That statement was not made a part of the record. That was done in a discussion, because we had many discussions that were not on the record. That statement was not made in open court. It was done in the Judge’s office, in the Judge’s chambers.

Q Were the statements that were not made a part of the record done so at the instruction of Judge Cherry, at your request, or what?

A Well, it came about in our discussion as to whether or not he should grant my change of venue, because I made this motion every day, and we would—I would make the motion on the record, and then we would, sometimes, have a discussion about it off the record, and, while the Sheriff was out rounding up more people to bring in, the Judge and I and John Reilly, the District Attorney, would go into the Judge’s chambers and sit down, and we would continue our discussion or argument, depending upon who was say-



ing what, but this was not made part of any record, as I recall.

Q On one occasion, did you specifically request that your motions for change of venue, which had been orally made, be made part of the record?

A I did, indeed.

[31] Q And do you recall approximately how many such motions you made during the course of the voir dire examination of the jurors?

A My recollection is that I made at least one every day.

Q How many total would that be?

A At least ten.

Q During the course of the impaneling of the jury, did the community interest continue or not?

A My recollection is that the community interest continued. Of course, during the jury selection, I made a motion that the public be excluded as much as possible, and, also, I made a motion to sequester the prospective jurors, because anybody who has ever tried a capital case, where the jurors are interrogated individually, knows that, after some prospective jurors hear another prospective juror questioned, hear two or three of them questioned, then the people know exactly how to answer the questions, if they want to get on or if they want to get off of the jury. So it is imperative that you have prospective jurors sequestered in any kind of a capital case, and this, of course, was what was done here. Now, there is always the problem, of course, when you are trying to limit the public

from coming in and listening to a trial, but Judge Cherry agreed, finally, after we had some long discussions about it, that, [32] since we were in the process of going out onto the street and collaring people and bringing them in, this would be self-defeating if we did not limit the number of spectators in the courtroom. So the interest was there, but we deliberately kept spectators out of the courtroom because of—you might be a spectator today, and, tomorrow, you might be a juror.

Q Did the selection of the jury continue to be front page news in the local newspapers, or was it less thoroughly covered than had been previously noted?

A Well, in a sense—we are talking about the second trial, now—it was less thoroughly covered, because Judge Cherry instructed the newspaper people to cooperate, when he explained the problem that we were having, and so there was a little less—I would say there was less publicity in the newspaper during the jury selection process in the second trial, but this was due to Judge Cherry's efforts, and he was trying to keep the procedure so that we could get a jury.

Q On one occasion during the impaneling of the jury, at the second trial, did Judge Cherry stop the selection of the jury to entertain a motion for change of venue?

A Well, yes. Well, he always did that, whenever we—whenever I would make the motion for change of venue, he would dismiss the jurors that had already been [33] seated, or we would have the argument in his chambers.

Q I mean not on your motion, but on his own, did there come a time, during the selection of the second jury, for the second trial, that he stopped the voir dire and indicated that it was impossible to select a jury?

A I believe so, but I can't recall any of the exact circumstances, as to just where we were in the process; but the answer to that is yes, he did do that.

Q Do you recall recessing for several hours, one afternoon, while legal arguments were presented, and a ruling being made by the Court the following morning?

A Yes, I definitely recall that.

Q How many preemptory challenges did you have?

A Twenty.

Q And do you recall how many the Commonwealth had?

A Twenty.

Q Did you exercise all of your challenges, your preemptory challenges?

A I did, indeed.

Q Do you recall whether or not more than twenty preemptory challenges were granted to you?

A At this time, I don't recall.

Q Do you recall—

A I know I asked for more, because of the [34] circumstances and because there were some jurors,

prospective jurors, whom I felt should have—my challenge for cause should have been upheld and was not, and I had some reason. I felt I should be entitled to a few more challenges because of that; but I don't recall the exact number.

Q Do you recall being given additional preemptory challenges, based on the illness of one of the jurors that had been selected?

A I have a vague recollection of something like that. I think there was one or two jurors who were selected and then, sitting there, and since this dragged on, this whole jury selection process dragged on for two full weeks, and I think some juror that originally had wanted to be a juror or answered the questions properly then had a change of mind or something like that and then asked to be excused, but whether it was for illness or some other family reason—I recall it happening. I don't really recall the details.

Q Well, do you recall whether or not you exhausted your preemptory challenges before the jury was impaneled?

A Oh, I definitely exhausted my preemptory challenges before the jury was impaneled. Otherwise, the jury would not have been impaneled. So long as I had a challenge left, the jury was not going to be impaneled. [35] And then, when I could not successfully challenge a juror for cause, I would then necessarily have to use one of my preemptory challenges, and this was under the understanding of Judge Cherry that, if we didn't seat them by the time we exhausted these few people that were left, why, he was going to grant my change of venue. So I ran out of challenges, and that is when the jury got seated.

Q Do you remember whether or not closing the courtroom during any phase of the second trial had anything to do with the personal safety of Mr. Yount?

A Yes. There was a story related by one of the deputy sheriffs —

MR. BELL: Objection, Your Honor. It calls for hearsay.

BY MR. SCHUMACHER:

Q Well, without relating what anyone else told you, were you able to ascertain whether there was any other reason for closing the courtroom?

A Any other reason? Well, the safety of the people in the courtroom, including Mr. Yount; including me, too. I was sitting right beside him.

Q Now, as the second —

THE COURT: Excuse me, one second. When was this closed? In time reference, at what point was the courtroom closed?

[36] THE WITNESS: This was during the second trial.

THE COURT: During the trial on the merits after a jury selection?

THE WITNESS: After the jury's selection, yes, this was during the trial on the merits.

THE COURT: And was it for the entire duration of the trial?

THE WITNESS: No. It was — well, it was the last — about the last two days of it, I think,

Judge when this incident occurred. Somebody had a weapon.

THE COURT: Thank you.

BY MR. SCHUMACHER:

Q That was after the trial of the second case started, this incident occurred?

A Yes, about the last two days of it, I believe.

Q And the person or persons that were in danger were whom?

MR. BELL: Objection, unless he knows, once again.

THE WITNESS: Well, from what was said, I know that I was in danger, and—because I was sitting right next to Mr. Yount, and Mr. Yount was obviously the primary target, but I was sitting right next to him, and I felt I was in danger, too.

[37] MR. BELL: Once again, Your Honor, we would ask that answer be stricken, based on the fact it is based on hearsay.

THE COURT: I think Mr. King can testify as to why the courtroom was closed.

MR. BELL: Yes, if someone stated why it was closed, but he indicated Mr. Yount was in danger, but he hasn't stated—

THE COURT: Mr. Schumacher, can we determine why the courtroom was closed?

BY MR. SCHUMACHER:

Q I will have to admit this is the first time I was aware this even occurred, so I would ask you if you could answer Magistrate Mitchell's question. Was there any conversation with the Court, with regard to the closing of the courtroom?

A Yes. The Court called a conference, Mr. Reilly and myself and Mr. Sabino and the Deputy Sheriff, and the Deputy Sheriff reported to the Judge, in my presence, that a person had attempted to come into the courtroom carrying a weapon, and this person had a very antagonistic attitude toward Mr. Yount, this person being a relative of the victim, of the deceased, and this was reported, and whereupon Judge Cherry said he would then close the courtroom.

[38] Q During the period of time, during the second trial, that the courtroom was open, were there spectators in attendance?

A Yes, there were.

Q Were there many spectators in attendance?

A My recollection is that the courtroom was fairly well filled every day.

Q Was it as well filled as it was during the original trial?

A I think the courtroom itself was, because I don't recall any empty seats. During the trial itself — not during the jury selection, but during the trial itself, the courtroom was fairly well filled, as I recall, and, as I said before, I have this very definite knowledge that the courtroom holds 165 people.



Q The reason for the question, if the Court would permit, is the fact that Judge Cherry filed an opinion, following the second trial, where he indicated that that fact was not true. I would ask to clarify that for Magistrate Mitchell, whether or not there were very few people in attendance, normally, while the second trial took place, many people, or whether or not the courtroom was full, as best you can recall.

A Well, my recollection differs from Judge Cherry's that, during the trial, the courtroom was more full [39] than not full. In other words, I would say it was—I don't think there were as many people around as there were in the first trial, but I would say that the courtroom was more full than more empty.

Q And did the media continue to cover the second trial, as they had the first?

A Well, you asked me two questions. Did the media continue to cover the trial? The answer is yes. Did they continue to cover the trial as much as they had the first? I am not sure about that.

Q Probably it wasn't a very clear question. Were they in the courtroom, at a table, like you indicated at the first trial?

A Yes, they were.

Q And was it on a daily basis?

A Yes, they were.

Q How many reporters would normally be in the courtroom on a given day?

A I would say it would average at least two. They would come and go.

Q They would be seated at a table, similar to the one you had previously described?

A Yes. The courtroom was set up the same way the second time as it had been the first time.

THE COURT: Mr. Schumacher, how about if we [40] take—let's recess until about 11:30.

(A short recess was taken at 11:20 a.m. o'clock.)

THE COURT: Mr. Schumacher, do you want to continue, please?

MR. SCHUMACHER: Yes.

BY MR. SCHUMACHER:

Q The second trial of Mr. Yount also resulted in a conviction; is that correct?

A That is correct.

Q That conviction was for?

A Murder one.

Q And the sentence imposed?

A Life imprisonment.

Q And did you continue to represent him on appeal?

A I did.

Q And was that appeal to the Supreme Court of Pennsylvania?

A It was.

Q And could you tell the Court what issues were raised at that appeal, as best you recall?

A Well, the primary issue was the refusal of the Trial Court to grant the change of venue, and secondly, the—see, all the evidence of the murder in this [41] case was circumstantial, and I was of the opinion that, once the felony murder element was taken out of the case, which was the rape situation, and there was no rape in the second case—there was no rape charge in the second case—I felt that the evidence did not justify a murder one situation, that all of the facts and circumstances and everything didn't measure up to any more than a voluntary manslaughter, assuming, of course, that there was grounds to find a conviction in the first place.

Q Did you raise any issue pertaining to any statements that were taken from Mr. Yount by State Police?

A Not in the second trial, because Mr. Yount did not testify in the second case, so the statements that he made and everything that had been admitted in the first case, I don't think were in issue the second time. That is my recollection, but I would have to—I haven't looked at the brief or anything that I wrote for the second appeal, so I don't recall whether there was an issue there on that point or not. If you have the record, whatever the record shows, that is what I will go along with.

Q And you will attempt to secure a copy of that brief?

A Yes. I am surprised you don't have it, but I still have voluminous papers, and I will try to find it. You want my brief from the first case or the second case, [42] or both?

Q Both.

THE COURT: Mr. Schumacher, I wonder if it might not be easier if we just call the Supreme Court and see if they have it, because I assume their files are less voluminous than Mr. King's, and perhaps we could get that, both, to copy.

MR. SCHUMACHER: Yes, and perhaps the Commonwealth would consent that it is going in, in evidence.

MR. BELL: The Commonwealth will consent that.

THE WITNESS: You will let me know; okay? I will not look, unless you tell me.

MR. SCHUMACHER: Yes.

BY MR. SCHUMACHER:

Q Whatever issues were raised in that brief were decided adversely by the Supreme Court of Pennsylvania; is that correct?

A That is correct.

Q Was any appeal for certiorari taken to the Supreme Court of the United States?

A No, not after the second trial.

Q Did you continue to represent Mr. Yount after his conviction?

A Well, I suppose you could say, inasmuch as I have continued to correspond with him and be with him, [43] although I have not participated in any active representation so far as preparing any pleadings or documents or anything formal. However, at his re-

quest and at the request of his officers in charge of the probationary proceedings, I have appeared and made myself available at each of the parole hearings that Mr. Yount has had, since he started to file parole petitions, and I have made myself available to answer any questions that the parole board may have or that anybody else may have as to the mechanics of either of the trials and/or anything else that I could help with. So I have represented him in that respect, but I have not filed papers myself or anything.

Q On approximately how many occasions have you appeared on behalf of Mr. Yount, in request for his release on parole?

A I would say at least eight or ten, and I don't know how many times the matter has come up, but I think only on one occasion did I not appear, and that is when I was engaged in trial over in Philadelphia or some place, and I wasn't here when they had that hearing; but I believe at all of the others, I did appear.

Q Is there anything that would have occurred during those approximately eight appearances that would have indicated continued community interest, in Clearfield County, in connection with the case?

[44] A Very definitely. On every one of those parole hearings, the mother of the deceased girl has appeared. That is, every one that I have been in, she has also appeared, and she has been extremely vehement in her position that she does not want Mr. Yount released in any way, shape, or form or any circumstances. And, on another occasion that I recall very vividly, a young man, who has a law degree, ap-

peared, and he was also a candidate for District Attorney in Clearfield County at the time, and he appeared, carrying what he claimed were about 2,200 signatures on a petition, all signed by citizens of Clearfield County who specifically did not want Mr. Yount considered for parole. And there have been several occasions when people have come in—"people" meaning citizens from Clearfield County—have come in, and, sometimes, these were presented by the current District Attorney in Clearfield County, sometimes they were presented by just citizens, not a law person, with petitions claiming that these were signed by citizens up there, very, very adverse to any idea of Mr. Yount being granted any commutation of sentence and parole.

Q Do you recall when the most recent such occurrence would have taken place?

A Well, the most recent occurrence, recent parole hearing, was just several months ago, several meaning about last February or March, I suppose it was—maybe it [45] was May of this year. Mrs. Reimer appeared and made her usual vitriolic speech about not wanting Mr. Yount paroled. I think that, at the parole hearing the year before, the District Attorney's Office from Clearfield County claimed to have papers with signatures on it, people who were opposing this. Now, those papers are all supposedly filed. At least, the Attorney General presiding at the parole hearing asked that these petitions be filed, so they should be available at the parole office, and they would be able to give you an exact count as to the number of papers that had been filed in opposition to Mr. Yount. But these people stated that at the parole hearing, that

they had all these signatures of people who were expressing an opinion that they did not want Mr. Yount considered for commutation and parole.

MR. SCHUMACHER: I have no further questions, Your Honor.

THE COURT: All right, Mr. Bell.

MR. BELL: Thank you, Your Honor.

---

*Cross-Examination*

BY MR. BELL:

Q Mr. King, you indicated that your initial appearance in this case was some time a few days, a few weeks, after this incident first occurred; is that correct?

A No. I think I said it was probably within [46] about thirty days I was initially contacted, and then — but I did say definitely I was in the case before the trial began.

Q Okay. And associated with you, you had Mr. Sabino from your office.

A That is correct.

Q And Mr. Blakeley, from up at Clearfield County; is that correct?

A Yes, sir.

Q Now, Mr. Blakeley actually didn't do anything with regard to the trial, as far as examining witnesses, etc. He was just local counsel, that you could use his office, etc. Is that correct?



A That is true. I mean, he may have done a couple other little things, but I really can't recall.

Q He didn't play a major part in the trial?

A No. I was chief counsel, and I decided the sequence of witnesses, and I asked all the questions. I made the openings and closings, and I did the major part of the chore.

Q Okay. Now, with regard to your appeal, as to the first trial, at any point, did you have occasion to examine the record of the case before you filed your appeal?

A I don't know that I understand your question. Have occasion to examine what record?

[47] Q The transcript of the trial, etc., of the first trial we are talking about.

A I can't—I would be inclined to think that I did, because, in preparing the brief and everything, you make notes and everything, so I would think I did refer to it, from time to time, but however I refer to it in the brief, that is what I said, but, if you ask me to remember for you on which page of the transcript something was said, I am afraid I wouldn't be able to do that.

Q And you indicated here, today, that, with regard to the first trial, as it was proceeding—in fact, you indicated that, if your first objection was overruled by the Court, the people would cheer and clap, or, if you won an objection, they would boo; is that correct?

A That is actually what happened.

Q. Are those items reflected in that record?

A. No, they are not, as I recall, just as the record is devoid of an incident that occurred during the first trial, when Mrs. Reimer was testifying and — assuming she testified on direct examination under John Reilly's questioning, very well, perfectly calm, perfectly composed. When I asked her, I think, the first question, she rose to her feet, screamed, "I can't stand the sight of that man any more, I can't stand this, I can't stand this," and she collapsed in the courtroom.

[48] Q. Okay. Now, that isn't on the record?

A. That is not in the record. And, as soon as that happened, I made a motion for a mistrial. I asked Judge Cherry, at that time, that I wanted to see that this was all on the record. And, incidentally, the court reporter there had a recorder, at that time, and I asked that that recording be impounded, so that it would reflect this lady's scream, which I felt was extremely prejudicial and extremely inflammatory, and the Judge said, "Okay, all in due time, later on." When we tried to replay that tape, it was all erased. That tape was erased, and, also, the court reporter never recorded any of these other things. But that did not come to my attention, and I didn't find out about that, until some time later, but that is exactly what happened.

Q. Okay. Now, then, I presume that Judge Cherry and Mr. Reilly would have recollections of these things happening, also; is that correct?

A. I have no idea what Judge Cherry and John Reilly's recollections would be. I am telling you what mine is, and I have a very definite recollection of it.

Q. Were they present when all of these items occurred?

A. They were, indeed.

Q. Now, you indicated that Judge Cherry has made representations to you that, if a certain panel of jurors [49] was exhausted, he would grant the change of venue; is that correct?

THE COURT: This is on the second trial; is that correct?

THE WITNESS: Yes, it was on the second trial.

MR. BELL: This is on the second trial; yes.

BY MR. BELL:

Q. And you used that as one of your bases for a post-trial motion; is that correct—the fact that this had been represented to you, that you had been promised this change of venue?

A. I believe so; yes.

Q. And are you aware—

A. Whatever the document says, whatever I wrote at the time that I wrote it, eleven years ago, why, that—

Q. That would reflect your recollection?

A. Yes, yes.

Q. Are you aware of Judge Cherry's opinion with regard to your post-trial motions, in denying those post-trial motions, in denying your motions in the second trial? Have you had an occasion to review that?

A. Not in eleven years.

Q. At some time, you did review it?

A. I assume I read everything that Judge Cherry wrote about the entire case at some time or another, but I [50] haven't reviewed it lately.

MR. BELL: Your Honor, Judge Cherry's opinion is filed with the official court papers. I have now had occasion to obtain a certified copy of his opinion as to the details of the post-trial motions at the second trial. If the Court would permit, I would like to hand Mr. King a copy of that and have him read one statement from it.

THE COURT: Is there any objection?

MR. SCHUMACHER: Yes, sir. No objection to using a copy other than the original; no.

BY MR. BELL:

Q. I am handing you a copy of the opinion of Judge Cherry, on Commonwealth versus Jon E. Yount, number two, May session, 1966, that being the opinion of the Court. I am directing your attention to the third page, and I have underlined a certain sentence. Would you read that sentence into the record?

MR. SCHUMACHER: Your Honor, I object to the procedure utilized in questioning the witness.

THE COURT: Do you want the witness to read the sentence to himself?

MR. BELL: I would ask the witness to read it into the record, unless I can have the Court indicate it would refer to the records in rendering any—

THE COURT: The records are so voluminous, [51] it will be hard to pick out some sentence.

MR. BELL: That is why I prefer to have the witness read it into the record.

THE COURT: What is your objection?

MR. SCHUMACHER: That is asking Mr. King to read it himself, to refresh his recollection, is one thing; if the District Attorney wants to refer to that in the briefing of his case, he can do so. I think this is improper cross-examination.

THE COURT: Mr. Bell, what is the purpose for asking this, just to put it in the record?

MR. BELL: Yes. It was just to put it in the record. I think I can do that by brief.

THE COURT: I think that would be more appropriate.

MR. BELL: If I could have Mr. King read it to refresh his recollection—

THE COURT: Go ahead.

MR. BELL: Have you read that particular statement I have indicated?

THE WITNESS: Yes. I have read it.

BY MR. BELL:

Q. Mr. King, now that you have read the statement by Judge Cherry, does that conform to your recollection as to what occurred?

[52] A. Absolutely, positively not. The Judge's recollection and my recollection are completely different. It happened as I said it happened, and I remember reading Judge Cherry's opinion before, and I denied what he said there, then, at that time, and I deny it today. He did exactly as I said he did, and that is all there is to it.

Q. Okay. Now, as to actual jury selection, you stated you were the person that did the majority of the questioning of the panel, the selection of the jury; is that correct?

A. That is correct.

Q. And did you also raise the various objections, the various preemptory challenges, or challenges for cause?

A. You mean was I the one speaking all the time? I think, for the most part, yes, although I am sure Mr. Sabino said something, from time to time, because he would probably have to do something besides sit there and sharpen pencils. How is he going to learn if he doesn't get a chance to participate? So I am sure I permitted him to ask a few questions now and then, and I am sure I had him ask a couple of the witnesses questions during the trial, but I can't delineate for you, at this moment, exactly what part; but, for the main part, I decided everything that was to be decided.

Q. Do you have any recollection of the number [53] of the panel of twelve who were selected without any objection whatsoever, without any objection by yourself or by the Commonwealth?

A. In the second trial?

Q. In the second trial, where no one raised any questions, where they had their voir dire, and they were seated without any questions of any sort?

A. I can't recall that, because the—nature is so very kind to all of us, you see, we always remember the unusual things and everything, but we don't remember the things that happen as a matter of course. If somebody—if some prospective juror met all of the qualifications and everything and, therefore, there would be no basis to object to him or to her, why, this would not serve to strike any kind of memory of it, in my mind, anyway; but those who were particularly biased or prejudiced and who showed it in a particular way, these, I would remember,

but somebody who was just an ordinary person, I don't recall, so—I hope I answered your question.

Q. Well, didn't you indicate that the community pressure and prejudice was sufficient that you felt that Mr. Yount's trial was impaired, his selection of a fair jury was impaired?

A. I think it is perfectly obvious that the selection of a fair jury panel was impaired, when you have [54] to go through 260 or 340 jurors, whatever the number was, in order to seat a panel of jurors. I think that is perfectly obvious, that you are in a bad situation.

Q. Would it surprise you if I told you you only went through 167 individuals with regard to the voir dire examination?

A. Yes. I think there were more than that. I think your count is bad, because I think you are probably eliminating the whole group of about one hundred that we dismissed at one fell swoop.

Q. Because of the improper selection of the array?

A. Yes.

Q. You count those as people who were examined, even though they were not examined?

A. No, I didn't count them as examined. I count them as jurors who were called and then dismissed, because, obviously, those people were not qualified to be jurors, because of the manner in which they had been selected.

Q. Right. There wasn't anything about their personal knowledge or the press or anything like that?

A. The Sheriff who selected them felt their personal knowledge was such he wanted them to be jurors, so I disagree. I think they should be counted, yes, but—



Q. Would it surprise you if I indicated to you approximately 99 percent of the original 12, of the original [55] jury panel, was selected without any challenges from either side?

A. Are you asking me to say either side?

Q. Does that surprise you? Does it sound about right, or—

A. You would have to tell me over what period of time they were selected. I mean, you are not telling me the first nine jurors that were seated—

Q. No.

A. See, the way your question is asked, that is what it indicates, and that definitely is not true, but, obviously—obviously, if we eventually did get 14 jurors, which we did, there must have been 14 people, or at least, say, the first ten or twelve of them, must have been satisfactory, or there must have been some reason—no reason why we could not disqualify them, either for cause or on the basis of preemptory challenge.

Q. Okay. Now, you indicated today, in your testimony, that, with regard to some of this press, that, at one point, there was the dissenting opinion of the Pennsylvania Supreme Court written and published in the Dubois paper, I believe, just the dissenting opinion, and that that was as to the reversal of the first trial conviction; is that correct?

A. That is my recollection, yes, whatever the [56] newspaper article says, it says. My recollection is that the dissenting opinion was printed almost in its entirety, and the reference to the majority opinion, which had granted the new trial, was just sort of mentioned in passing. In other words, it was a disproportionate coverage, is what my recollection is. But whatever the article says, it says.

Q. Do you have any recollection or do you have any information which would lead you to believe that the full opinion of the Court was printed prior to the time that dissenting opinion was printed in the Dubois paper?

A. I have no recollection of that, right offhand, but what I said before—I supplied Mr. Schumacher with all of the newspaper articles that I have, and whatever they show, they show. I mean, I didn't go through them and select one and eliminate another. I gave him all of the articles, and I believe that I have a fairly complete copy, but I did not select any article, is what I am trying to tell you.

MR. BELL: Your Honor, once again, if I might approach the witness and have him examine a copy of a letter to himself from the Dubois Courier Express, it might refresh his recollection as to the publishing of articles.

THE COURT: Go ahead.

(The witness examined documents handed to him by Mr. Bell.)

[57] BY MR. BELL:

Q. Does that item refresh your recollection as to the publishing of that dissenting opinion and the majority opinion?

A. Oh, vaguely, it does. I mean, I knew that it was published, but, like newspapers do so many things, they are strong to accuse and everything, and then, when it comes to printing the retraction, they put it on the back page with all the classified ads. Now, I don't recall specifically where those articles were published, but that letter was written to me, and I do have a recollection of receiving it.

Do you have a copy of my letter to the newspaper, where I criticized them for the way in which they did it? Do you have my letter to them?

MR. BELL: Your Honor, I believe I am asking the witness questions, as opposed to him asking me.

THE WITNESS: Sorry about that. I am used to sitting over there.

BY MR. BELL:

Q. Now, with regard to that particular letter I showed you to refresh your recollection, is it true that you have filed this particular letter as an exhibit with regard to the hearing that you had on the change of venue held July 29 of 1970?

A. If that letter is attached to a legal pleading [58] that I filed, then the answer is yes, although, at this moment, I have no recollection of that.

Q. Okay. And, once again, this letter is contrary to your representation that just the dissenting opinion was printed. This indicates the full opinion was also printed at some time.

A. That letter indicates that, but, as I am saying, my recollection is that the lead story and the big story on the front page was the excessive publication of the dissenting opinion. They were not published in equal importance, is what I am trying to convey to you. That is my recollection.

Q. You don't recall exactly where each story was printed in the paper?

A. No, I do not, not at this moment, but, if you have the newspaper articles themselves, there should be some indication there as to where they appeared in the paper, although there may not be.

Q. If we turn to the jury selection for the second trial, you indicated that, with regard to witnesses of that selection, that the Court tried to keep as many people out as possible, because they may be people who might be selected to the next panel.

A. That is my recollection, and it became necessary that the jurors were now going to have to be [59] selected from the general public, from the general talismen.

Q. Did that come to the front during the first day of jury selection, that there were going to have to be more people selected?

A. No. No, it did not, because I think we had—I think we had, maybe, 50 people in the first panel, and I don't think we ran through those till, maybe, the third day.

Q. It took a fairly long time to go through each person?

A. Yes. Each witness, I would say, averaged about—oh, they averaged fifteen or twenty minutes per witness, so you can't mathmatically say how fast you can move on that.

Q. Do you have any recollection whatsoever as to how many witnesses observed jury selection, for example, the first day or the second day? Was the courtroom packed, was it half full, was it less than full, whatever?

A. I would say it was at least half full, between half—I wouldn't say it was packed, because jury selections are usually pretty dull, anyway, and, also, the general public is behind me, I am facing the other direction, and so I wasn't really turning around, looking at them, all the time.

Q. Would it surprise you if I indicated to you that an affidavit you filed in this particular matter as to

[60] various newspaper articles—which I believe are included within the exhibits already introduced before this Court—indicate that, with regard to the first day, there were just six spectators in the courtroom? That is the first day of the jury selection.

A. Was your question to me, would it surprise me?

Q. Yes.

A. If I filed an affidavit that said that, I am sure that that is what I felt and that is what I knew at that time, although my recollection today is that there were more people than that, although—

Q. So your recollection today might not be correct; this would represent a more accurate reflection?

A. Without seeing the entire affidavit, I am sure the affidavit says more than that; doesn't it?

Q. Yes. The affidavit also indicates that, after lunch, one spectator was in the courtroom.

A. Does it?

Q. Yes.

A. Whatever that affidavit says—was that during the jury selection, or was that during the trial?

Q. That was during the jury selection.

A. During jury selection. Well, then, that would have been after we made the motion to Judge Cherry to [61] try and cut down the number of people there.

Q. Do you happen to have any knowledge, now—you indicated you came up to Clearfield County at the request of someone else.

A. Yes.

Q. Had you ever been to Clearfield County before on any matters, criminal or otherwise?

A. No, I don't think so.

Q. Do you have any knowledge as to the size of Clearfield County, as opposed to other counties? Is it one of the largest counties in the state?

A. I am of the opinion it is one of the smaller counties. It is not as small as, say, Elk County or Clinton, perhaps, or maybe some of those a little further north and west, but I am of the opinion that Clearfield is one of the smaller counties.

Q. Okay. Now, are you talking about population size or physical size?

A. I am talking population.

Q. What about physical size. Do you have any knowledge as to how big it is?

A. Well, physical size, all those counties up there are pretty much the same. Of course, none of them are as large as Allegheny County, and Allegheny County is, I think, the physical size is the largest county in the state, [62] but Clearfield County, I don't think I could give you the number of square feet or square miles or something, but it is an average size for up in that part of the state.

Q. Now, you have indicated in your testimony here today that, with regard to the selection of the panel, your recollection is that the Sheriff or someone had to go out about eight or nine times, throughout the jury selection, to bring in people; is that correct?

A. That is my recollection, because he would go out and get some, and then the Judge would tell him, "You better get some more," so he would go and bring them in at, maybe, eight or nine at a time.

Q. If the record reflects something different from that, then your recollection at this point must be impaired, or, you know, you just can't remember?

A. I don't know if it is impaired, but you remember things as you remember them, and you just have a recollection that the Sheriff would be coming in and out all the time while this was going on. We would recess for a few minutes and have a discussion with the Judge, and the Judge would say, "Well, go get some more," and so, maybe, it is eight or nine times that the Sheriff was in and out of the courtroom, at which this matter was discussed, but I didn't keep a box score on it, as I recall.

Q. As you indicated, you appeared on Mr. Yount's [63] behalf at some of these pardon board hearings, etc.; is that correct?

A. That is correct.

Q. And, in fact, indicated that, all except for one, you believe you appeared at, and that is because you were in trial somewhere.

A. One, I remember definitely, I was not there, and I couldn't be there because I was some place else, and I remembered writing a letter or something to his probation officer or something about that, and I have a recollection about that, but I don't recall exactly what year or what time or anything specifically.

Q. And you are appearing on his behalf, at his request; is that right?

A. Yes.

Q. To speak for him with regard to the pardons?

A. Yes.

Q. Now, let me clear up something. You didn't appear as his counsel, the pardons board counsel did that; but you were there as a friend of Mr. Yount's or a former attorney of his?

A. As a former attorney and a friend, too, I came to know Jon over the years, in my representation of him,



and, although prior to this trial I never knew Jon and he never knew me, but I considered him in the friendship [64] category.

Q. And you have indicated that, through the correspondence, etc.—are you still corresponding with him today?

A. Oh, I think we have exchanged, maybe, two or three letters a year or something, usually in relation to the pardon board. I have not corresponded with him in connection with this proceeding. It is a matter of him telling me when the pardon board is going to be there, and if he has a petition filed, and he is asking me if I would be in town and be available at that time, and I would answer that letter and say yes I would or I wouldn't. That would be the extent of it.

Q. Now, with regard to your recollection—and we have already gotten into the fact your recollection doesn't accord with that of Judge Cherry. You are very adamant you are correct.

A. I am sure Judge Cherry will be just as adamant he is correct, knowing him as I do, and I will not criticize him for that, and I am sure he will not criticize me for what I have said.

MR. BELL: I have no further questions.

THE COURT: Mr. Schumacher?

---

*Redirect Examination*

BY MR. SCHUMACHER:

[65] Q. On cross-examination, you were asked questions about an affidavit you filed in a motion for a

change of venue. I show you a copy and ask you to examine that document to refresh your recollection.

A. Well, it is my signature, and I have a recollection of dictating this, and I think this is one of the documents that we probably had prepared in Mr. Blakeley's office in Clearfield.

Q. Now, in submitting that affidavit to the Court, you attached numerous newspaper articles to it; is that correct?

A. That is correct.

Q. Now, when you affirmed that those newspaper articles appeared in various newspapers in Clearfield County, did you also affirm to the accuracy of the contents of those newspaper articles?

A. Oh, no. No.

Q. And, more specifically, sir, I call your attention to—excuse me. P-1-MM, that corresponds to the exhibit admitted in evidence referring to an article appearing in the Courier Express, November 5, 1977. I would ask you to examine the reference with respect to the number of people in the courtroom.

A. (Examining document) I have read it.

Q. Now, is that what you affirmed to the Court [66] as accurate, or is that what the person that wrote the article said took place on that specific day?

A. Well, that is obviously the statement of Sally Moyer, a staff writer, whoever that is. That is Sally Moyer's statement. That is not my statement. My affidavit is merely calling the Court's attention to the publicity that the case is being given and the fact that it is mentioned in the newspaper. What the newspaper says about

it is another matter. I am not in any way ascribing or confirming what the newspaper people are saying, but any similarity between what was going on and what they say would be strictly an accident.

Q. You were asked, on cross-examination, concerning your challenge to the array; do you recall that—

A. I do.

Q. —testimony? Following that successful challenge, how were additional jurors then selected, if you can recall?

A. You mean the additional prospective jurors?

Q. Yes, sir. Were they selected from the wheel, or did the Sheriff go out and find other people, or what took place?

A. My recollection is they were not selected from the jury wheel, that the Sheriff was instructed by Judge Cherry to go out and find jurors, in accordance with the [67] established rule in Pennsylvania, to go out and collar the first people that he ran into on the street that were over the age of 21, and able to read and write, those being the only qualifications for being a juror in Pennsylvania at that time.

Q. Excuse me. Are you finished?

A. No. I was just going to say I did not go with the Sheriff when he went out and did this, but I was there when Judge Cherry instructed the Sheriff how to go about doing it, and so I must assume that the Sheriff did as he was told.

Q. But I am referring to after that panel was successfully challenged by you, and additional prospective jurors were selected. Do you recall how that took place?

MR. BELL: Your Honor, I believe he has already answered that question, in that he believes the Sheriff was told to go out and pick people off the street, once again, with the qualifications that they be 21 and able to read and write and whatever.

THE COURT: Haven't we been through this?

MR. SCHUMACHER: Yes, sir. I have no further questions, Your Honor.

THE COURT: Mr. Bell?

MR. BELL: Just briefly.

---

*Recross Examination*

[68] BY MR. BELL:

Q. As to these articles of Sally Moyer's and some of the other newspaper people, you indicated you had placed those in your affidavit to show the publicity the trial was getting, as opposed to the accuracy of what they say; is that right?

A. That is right. I don't have any recollection of what the articles say, except as I would read them right now.

Q. Yes. Do you have any reason, at this point, to doubt the accuracy of Miss Moyer's representations in there, that you know at this point?

A. Yes. I have reason to doubt it, because that is not my recollection, and the thing I am talking about and you are talking about in this affidavit is that, on the November 3 issue, the Court expressed—now, they go and they say Yount was convicted of the rape-murder of Pamela

Sue Reimer. Every time they get a chance, they throw in the word, "rape," even though the Supreme Court has said there wasn't any rape, and this is being published on the eve of the second trial, and that is what is bad about it, and this is what is extremely prejudicial, and this is what I am objecting to, and they never refer to it as just Mr. Yount's murder trial, it is always his rape-murder trial. And look at the next one, here, Tuesday, November 3: "Yount trial [69] jury selection set. We had the trial of Yount on charges of first degree murder and rape once. This is the second trial." Nothing could be further from the truth. There was no trial on rape, the second time, and this is what they were doing all the time, and this is what I was complaining about, and I am still complaining about it today. It is very unfair. Every one of these articles, they do that, and they all keep talking about rape, and there is no rape now, and this is what I am complaining about or was complaining about then.

Pardon me. I didn't mean to raise my voice.

MR. BELL: I have no further questions.

THE COURT: Mr. Schumacher?

MR. SCHUMACHER: No, sir.

THE COURT: Okay. Thank you very much, Mr. King.

(Witness excused.)

THE COURT: I think we might as well break here for lunch. Supposing we resume at 1:30.

(Court was recessed for luncheon, to reconvene at 1:30 p.m. o'clock the same day.)

## [70] Afternoon Session

THE COURT: Mr. Schumacher, do you want to continue, please?

MR. SCHUMACHER: Yes, sir.

Mrs. Yount, take the stand, please.

---

CAROLINE YOUNT, called as a witness by and on behalf of the Petitioner, having been first duly sworn, was examined and testified as follows:

THE WITNESS: Mr. Schumacher, you will have to talk a little louder. My one ear, today, I can't hear too well out of it.

*Direct Examination*

BY MR. SCHUMACHER:

Q. State your name for the record, please.

A. Mrs. Caroline Yount.

Q. And where do you live, Mrs. Yount?

A. R. D. 2, Dubois.

Q. And that is located in Clearfield County?

A. That is right.

Q. How long have you lived in Clearfield County?

A. Well, sixty years.

Q. And your son, Jon Yount, is the petitioner in this case; is that correct?

A. That is correct?

[71] Q. And did you live in Clearfield County in 1966?

A. Yes.

Q. And you lived in Clearfield County when the death of Pamela Sue Reimer occurred?

A. Yes.

Q. Have you followed the case involving your son and the death of Miss Reimer since that time?

A. Yes, I have.

Q. Have you followed the publicity in the newspaper?

A. Yes.

Q. Have you followed any publicity that existed in the radio and television stations?

A. Yes, radio and on television.

Q. Now, referring to the first trial that took place, you heard the testimony about the various newspaper articles that were already introduced in evidence, so I won't repeat that. Was the case also followed on the radio?

A. Yes.

Q. How did the radio broadcast of the news correspond with the newspaper account?

A. It was identical. The Gray Printing Company, they own the Courier Express, and they own the WCED, and it was identical. They own the both stations.

[72] Q. So if something ordinarily was in the newspaper, would it also be on the radio?

A. That's right; um-hum.

Q. How many radio stations are there in Clearfield County, if you know?

A. Well, one in Clearfield, and we have two in Dubois, now, we have WDBA and WCED in Dubois.

Q. How about in 1966?

A. Clearfield had one and Dubois had one, at that time.



Q. Did the Clearfield radio also cover the news?

A. Yes, very much so.

Q. How about the television station?

A. Well, I don't know too much about that. It was on the news. We were over at the hearing, and it was on the news. When we would come home, we would turn the news on, WJAC, that is Johnstown.

Q. You were in the courtroom when there was testimony about the number of people in the courtroom at the first trial. Would you tell the Court whether or not there were a lot of people in the courtroom or a few or how many during the first trial?

A. Oh, it was packed, and they were packed out in the hall, and, when Jon got up to testify, they had the doors closed, but, when he got up to testify, they opened [73] the door, and it was crowded, the hallways were crowded.

Q. The day the verdict of guilty was pronounced by the jury and he was sentenced by the Court, was there a crowd of people in attendance then?

A. Yes.

Q. Was the courtroom full?

A. No, I don't think it was full.

Q. Were there people outside the courtroom after the hearing?

A. Yes; the first trial?

Q. First trial.

A. Um-hum.

Q. Large group, small group?

A. Large, um-hum, if I remember correctly.

Q. How about after the first trial, did you continue to read and hear about the case?

A. Well, you couldn't help—every paper you picked up, there was something in about it.

Q. Besides what you saw in the newspaper or heard on radio and television, were the people of Clearfield County talking about the case, as far as you knew?

A. Everyone, practically everyone; yes. It was big news, at that time.

Q. Now, you recall the reversal of your son's conviction by the Pennsylvania Supreme Court; do you remember [74] that?

A. Yes. That was also in the paper.

Q. Were people talking about it?

A. Yes.

Q. Was it a matter of common discussion among people in the community or not?

A. Yes. Anything that pertained to Jon—well, on account of the paper, it had inflamed the people in Clearfield County.

Q. How about the second trial? Was that also a matter of discussion among people?

A. Yes.

Q. And you continued to read about it in the newspaper?

A. Yes, I did.

Q. And hear about it on radio?

A. Yes.

Q. Television?

A. Yes.

Q. And did that continue through the selection of the jury and the trial?

A. In the paper, it did, but I don't know about on television, but I know it was in the paper.

Q. What about the number of people that were usually in the courtroom during the second trial? A few?

[75] A. No. It was filled, but not as many as the first trial.

Q. How many days were you in the courtroom during the voir dire selection, before the second trial?

A. I think about two, two times, two days.

Q. On those two occasions, how many spectators do you recall were in the courtroom?

A. Well, there was a good many.

Q. How many is a good many, one, five, ten?

A. Oh, I would say 25.

Q. Did you attend the trial of the second case?

A. Oh, yes, every day, um-hum.

Q. Were there many spectators in the courtroom during the second trial?

A. Yes, um-hum.

Q. Every day?

A. Every day.

Q. How many?

A. Well, I don't know, but there was a good many.

Q. How many is a good many?

A. Well, I was so confused at that time, you know, but I looked around, and, oh, I would say it was practically full.

A. You were present, and other relatives of Mr. Yount were present; is that right?

[76] A. That's right; um-hum.

Q. Now, who did those relatives normally include?

A. Well, my husband and my daughter.

Q. His wife?

A. And wife, yes, and cousins and nieces and nephews.

Q. Were there relatives—

A. Or cousins, rather, to Jon, but nieces and nephews to me.

Q. Can you hear my voice okay now?

A. What?

Q. Can you hear what I am saying?

A. Yes, fine.

Q. I don't know how long it is going to last.

THE COURT: Do you want to move over?

MR. SCHUMACHER: Some of the judges insist you stay at counsel table, so that is why I was here.

THE COURT: If you want to take a chair over there—

MR. SCHUMACHER: This is okay.

BY MR. SCHUMACHER:

Q. Were there relatives of Pamela Sue Reimer in the courtroom?

A. Yes, um-hum.

Q. And were there newspaper reporters?

[77] A. Yes. They were up at a table up front.

Q. Was that table in the body of the courtroom, as were defense counsel and the district attorney?

A. Yes, um-hum.

Q. Was it the same during the first trial?

A. Yes, no different.

Q. Do you know whether or not there were people present who worked in the courthouse?

A. Well, yes. They had a woman there all the time.

Q. I mean spectators. Were you familiar with any spectators in the courtroom, that might have worked in the courthouse?

A. Well, I really don't know if they worked in the courthouse or not.

Q. But there were people there you didn't know?

A. Oh, yes, a lot of people I didn't know.

Q. And did that normally occur, every day?

A. Every day.

Q. Now, after your son was convicted the second time, did the publicity die down?

A. No.

Q. Did people continue to talk about the case?

A. Yes, they did. Well, how could they help it, when it was in the paper, and Mr. Morgan had it in, "If you [78] want to keep John Yount in prison, send a letter to me." He had his address.

Q. Who is Mr. Morgan?

A. He is sitting right there.

Q. The District Attorney?

A. Yes, the D.A.

Q. Of Clearfield County?

A. Yes.

Q. When did that occur?

A. Why, whenever John would come up for parole, this occurred

Q. Was there any other community interests in either opposing or encouraging your son's chances for parole?

A. Well, they had petitions in the churches, in the stores, in the mall, not far from where I live, and in beer gardens, which I felt very bad about, to think that they would have to have petitions in beer gardens.

Q. Petitions for what?

A. For to sign against John.

Q. Against John getting what?

A. Parole.

Q. I will show you what has been marked for identification Plaintiff's—or Petitioner's Exhibit No. 3, and I would ask you to tell the Court what that is.

A. Yes.

[79] Q. What is that?

A. This was put up in the Fashion Bug, in the mall, in Dubois.

Q. It is a picture of something.

A. It was, "Please join Yvonne Reimer, Fashion Bug, and our community in keeping John E. Yount, murderer, behind bars. Please sign below. Thank you." Now, this is the kind of things that has been in our town, and I think it is terrible. Who do I give this—

MR. SCHUMACHER: Thank you.

I offer the exhibit into evidence, Your Honor.

THE COURT: Any objection?

MR. BELL: We would object as to the foundation. It hasn't been indicated when that was, who took the picture, etcetera.

MR. SCHUMACHER: I will qualify it.

BY MR. SCHUMACHER:

Q. Do you recall when you saw that poster in the window?

A. Well, I didn't see it in the window.

Q. Who did?

A. Why, this man took—went down and took a picture of it and brought the picture to me.

Q. When?

A. Well, the last parole, when he was up for his [80] last parole.

Q. When was that?

A. That was in June, but it was before that. I would say—oh, let's see—June— around April.

Q. Of this year?

A. No, 1980.

Q. Do you know whether or not the sign was in the window?

A. It wasn't in the window, it was right out in the mall, when people went by and—

MR. BELL: Objection, Your Honor. She said she had no personal knowledge of this, so I don't see how she can testify as to where this was.

THE COURT: Mr. Schumacher, would you clarify that, please?

BY MR. SCHUMACHER:

Q. Did you ever see the picture, wherever it was?

A. No, I never did, but this was given to me, and it was in—and I not only saw the picture, but there wasn't one person but there was a hundred told me that was down in the mall.

Q. Are you aware how many petitions were signed opposing your son's release on parole?

A. Why, this gentleman said 10,000.

[81] Q. Which gentleman?

A. This one right here. I don't know what his name is. (Indicating.)

Q. The counsel for the Commonwealth in this case?

A. Yes.

Q. Mr. Bell?



A. Yes, um-hum. He got up in front of the Parole Board, and that is what he said.

Q. When was that?

A. That was in June.

Q. Of 1980?

A. Um-hum.

Q. Were other such petitions from Clearfield County presented to other parole boards, over the course of the years?

A. Not that I know of, because we have had a good many murders in Clearfield County, and you didn't hear too much about them. It was in the second page, and then very small.

Q. I am talking about any other petitions relating to your son. Are you familiar with any other petitions in Clearfield County opposing his release?

A. Yes. Over in Clearfield, there was a good many in the town of Clearfield. No doubt these young men [82] know about it.

Q. Where would those have been circulated?

MR. BELL: Objection, Your Honor. Once again, we are going for hearsay. If she knows, she can testify.

BY MR. SCHUMACHER:

Q. Do you know where it was circulated?

A. Yes. One was at the diner, and one was at the mall over in Clearfield.

Q. Did you ever see any of them, yourself?

A. No, not over there.

Q. Did you see any anywhere?

A. No. Naturally, they wouldn't want me to sign it, if they knew who I was.

MR. SCHUMACHER: I have no further questions, Your Honor.

THE COURT: Mr. Bell?

MR. BELL: Thank you, Your Honor.

---

*Cross-Examination*

BY MR. BELL:

Q. Now, Mrs. Yount, you have indicated, back at that time that all this occurred, there was one radio station in Dubois and one in Clearfield; is that correct?

A. Yes.

Q. And I believe the stations were—both of them were owned by the publishers of the newspaper in the [83] different areas.

A. No, I don't know about Clearfield, but Dubois I do know.

Q. I believe Mr. Ulrich owned both the Clearfield paper and the Clearfield station. It is your testimony that, with regard to the reporting on the radio, basically, that indicated what had been in the paper that day?

A. That's right.

Q. Now, do you subscribe to the Dubois Courier Express?

A. And have ever since we have lived in Clearfield County.

Q. How long have you lived in Clearfield County?

A. Sixty years.

Q. The Dubois Courier Express, that is distributed just in the city of Dubois?

A. No. I live out in R.D. 2, and I get the paper every day.

Q. So it is disseminated outside of the city of Dubois?

A. Yes.

Q. Do you happen to know whether that newspaper goes to any other counties?

[84] A. Yes, Jefferson County, I am quite sure.

Q. How about Elk County?

A. Elk County, yes.

Q. So the distribution figure we have admitted here on—the Public Defender's Office admitted—represent papers that may have gone into Elk County, Jefferson County and Clearfield County.

A. I assume they do, because Elk County is not too far, and I know Penfield is—Penfield and Weedville, they are in Elk County.

Q. We are dealing with an area where we are right on the borderline?

A. Yes, and they get the Courier, or they distribute it down there.

Q. Now, you indicated, I believe, with regard to Mr. Morgan, that there have been things in the paper indicating that he was soliciting people to send things.

A. He certainly was, yes. I have the clippings.

Q. Do you have them here with you today?

A. No, I don't have them today.

Q. Do you recollect exactly what those clippings say?

A. Yes. Anyone opposed to John Yount's parole, would they—and he gave his telephone number, and he gave his address.

[85] Q. Was that put in by Mr. Morgan, or do you know?

A. No. Who else would put it in?

Q. Was there a reporter's byline underneath it? Do you happen to know whether Mr. Morgan called up and said, "Put this in," or otherwise?

A. I don't think the Courier would put things in unless they are advised to do so; do they?

Q. So, to your knowledge, there is just this article in there, to write to Mr. Morgan; you don't know whether Mr. Morgan actually put that in?

A. Yes, my own feeling, I think he did.

Q. You feel he put it in, but you don't know?

A. Well, reading is believing—not everything, but a thing like that, I think it would be.

Q. Did—

A. Who else? His name was to send that to Mr. Morgan.

Q. He is the District Attorney of the County; is he not?

A. I know he is, and I thought it was very small.

Q. He is the official who would handle such things; is that correct?

A. What?

[86] Q. He is the official who would handle such things; is that correct?

A. Yes.

Q. What I am getting at is, you don't know whether he called the paper and said, "Put this in"?

MR. SCHUMACHER: Objected to as asked and answered.

THE WITNESS: I don't know how I would know that.

BY MR. BELL:

Q. Okay. Now, with regard to the petitions, you indicated he had presented 10,000 petitions or names to the board last time; is that correct?

A. Yes. I was there.

Q. Now, that was June of this year, 1981; is that correct?

A. No, June of 1980—or was it '81?

Q. Eighty-one, this past June?

A. The past—that's right.

Q. I just wanted to clear that up.

A. His last parole.

Q. Yes.

A. Yes.

Q. Now, during the period of time since the second trial, you have indicated you have resided in Dubois?

[87] A. Yes. I have never lived anywhere else.

Q. Okay. And have you traveled throughout the Dubois area communities and Clearfield County area?

A. Yes.

Q. Have you traveled around those areas during these times the petitions were supposedly floating out and about, for the people to sign?

A. Yes. Well, I am over in Clearfield quite a lot, and—yes.

Q. And did you ever see one of those petitions, or did anyone ever approach you?

A. No, I have never seen one, but people has called me on the phone, and they have told me about the petitions being circulated.

Q. Now, you indicated that there was a lot of publicity during the time of these particular trials and in between; is that correct?

A. Oh, yes.

Q. Now, since the time of the second trial, and I guess that went up on appeal, etc., has the publicity died down, to some extent, other than the pardons hearings, as they come up every year?

A. Well, I haven't heard it mentioned too often, only when it comes up for parole.

Q. And each time that comes up, there is something [88] in the paper?

A. Yes, there is something in the paper, yes, and I think it comes from Clearfield.

Q. Do you happen to know when Mr. Morgan was elected District Attorney? Do you have any knowledge?

A. Yes, because I work on the board.

Q. Okay. When was that?

A. Was it three years ago Mr. Morgan ran?

Q. Okay. Was Mr. Morgan District Attorney at the time that John was tried—Mr. Yount was tried, your son—or was Mr. Reilly the District Attorney then?

A. Yes, he was the D.A. then, Mr. Reilly.

Q. So Mr. Morgan got the position some time after the trial?

A. Yes, um-hum, that's right.

Q. Would '75 sound right as to when Mr. Morgan was first elected to the position, if you know?

A. Let's see. No, this is his second term— isn't it? I don't know. I think he was in before that.

MR. BELL: No further questions.

THE COURT: Mr. Schumacher, anything further?

*Redirect Examination*

BY MR. SCHUMACHER:

Q. Was there anything in the newspapers about this case in Federal Court?

[89] A. Yes, two articles in about it, about him and about—they were having him up for—what is it, the Miranda case?

Q. Whatever, you read articles in the newspapers about this hearing and this case pending in Federal Court?

A. Yes, I did, two different times, and that it would be held November 3 in Pittsburgh, and—

Q. I show you what has been marked as Plaintiff's Exhibit 5 and ask you to tell the Court what that exhibit is.

A. Well, this here is, "Will Oppose John's Petition at November 3 Hearing," and "Yount Challenging State Conviction in Federal Court."

Q. Are they the two articles you are referring to?

A. Yes, they are the ones that were—yes.

MR. SCHUMACHER: Those articles appeared in the Dubois Courier Express, Tuesday, October 6, 1981—

THE WITNESS: No, there hasn't been—

MR. SCHUMACHER: —and the Dubois Courier Express, Saturday, October 10, 1981. I offer them into evidence, Your Honor.

MR. BELL: No objection, Your Honor.

THE COURT: Okay. We will admit them.

(Petitioner's Exhibit No. 5 was received in evidence.)



[90] MR. SCHUMACHER: I have no further questions.

THE COURT: Anything further, Mr. Bell?

MR. BELL: Nothing further.

THE COURT: Do you want to step down, then, Mrs. Yount?

(Witness excused.)

---

CLAIR CLYDE, called as a witness by and on behalf of the Petitioners, was duly sworn.

MR. BELL: Your Honor, could I have an offer on this? If it is going to be the same as Mrs. Yount, I could stipulate to the publicity.

MR. SCHUMACHER: Only she saw one of the petitions—she saw the petitions being circulated, that Mrs. Yount didn't, and, in addition, she would testify to an incident that occurred at the local church, where a prayer group was discussing the matter and was opposing the release of Mr. Yount.

THE COURT: Now, this is all post-conviction?

MR. SCHUMACHER: Post-conviction, just to show the publicity continued all the way up to the present.

THE COURT: Can we get a stipulation that, whenever Mr. Yount comes up for a parole hearing, that there is parole publicity?

MR. BELL: I will stipulate whenever Mr. Yount [91] comes up, there is an article in the paper,

and petitions have been presented to the board with regard to opposition.

THE COURT: Is that satisfactory, Mr. Schumacher?

MR. SCHUMACHER: Yes, sir.

The next witness for Mr. Yount will also confirm the fact that publicity has occurred from the time of the initial incident involving the death of Pamela Sue Reimer, through the present time, including, as previously stipulated, the parole hearings, and, in addition, as to the particular community attitude, where there is a constant discussion concerning Mr. Yount, in opposition to his release from prison. Her name is Connie Ives.

THE COURT: Can Miss Clyde step down?

MR. SCHUMACHER: Yes.

THE COURT: He wants you to step down. Thank you.

(Witness excused.)

THE COURT: Mr. Bell, can you enter into any stipulation?

MR. BELL: With regard to that, once again, we will stipulate to that. The only objection I would have is "constant publicity." Every time the petition is presented, it does arise. We would stipulate to that point, but, as to "constant"—

[92] THE COURT: "Constant," at this time?

MR. BELL: Yes, at this time.

MR. SCHUMACHER: I would prefer to call the next witness, Your Honor. My client desires to have her testify.

THE COURT: Okay.

---

CONSTANCE IVES, called as a witness by and on behalf of the Petitioner, having been first duly sworn, was examined and testified as follows:

*Direct Examination*

BY MR. SCHUMACHER:

Q. State your name, please.

A. Constance Ives.

Q. Where do you live?

A. R.D. 2, Dubois.

Q. How long have you resided in Clearfield County?

A. Since September of 1976.

Q. What is the nature of your occupation?

A. I am a medical technologist.

Q. And so, since you didn't reside in Clearfield County in 1966, your familiarity with any matters relating to the case began when?

A. In 1966, I was in Elk County, at the time, [93] working at Andrew Cole Memorial Hospital.

Q. For whom?

A. Dr. Dennis Sharkey.

Q. And so you were familiar with matters pertaining to this case back in April of 1966?

A. Absolutely.

Q. And the initial publicity that occurred following the death of Pamela Sue Reimer?

A. Yes.

Q. And were you familiar with the publicity that occurred concerning the trial, the first trial?

A. Yes, very much so.

Q. And the second trial?

A. Yes.

Q. Now, that publicity has been discussed extensively here. Were you also familiar with any discussions concerning the cases in the community?

A. Yes, several. One, in particular, my former father-in-law was called to possible jury duty in the second trial, and I remember quite vividly him leaving, that morning, to go over to the courthouse, and, at the time, my sister-in-law, at the time of Pamela Sue's death, was also a student at Dubois High School, and there was great animosity on his part towards the whole situation, and he was a prospective juror, at the time.

[94] Q. And, at that period of time, were there conversations concerning Mr. Yount?

A. Yes.

Q. And were you personally familiar with those conversations?

A. Yes.

Q. And were those conversations negative to him?

A. Definitely. Most definitely.

Q. And did the attitude in the community pertaining to Mr. Yount end with his conviction, following the second trial?

A. Yes. It is still regarded, to—again, to the people that I have conversed with personally, as rape-murder or murder and, again, animosity toward him, in general.

Q. When you refer to still regarded as rape-murder, do you mean the first case?

A. No, I mean the second—I mean the negative opinion is still—it does not seem that anyone has realized the rape has been dropped from the charges.

Q. So throughout the second trial, the attitude of the community was that he was still being tried for a rape?

A. Definitely.

Q. And is it your testimony that the attitude of the community continues up to the present time in that regard?

[95] A. Up to three weeks ago, the last conversation I had, yes.

Q. Are you familiar with any petitions that have been passed around in Clearfield County to be signed by people, opposing the release on parole of Mr. Yount?

A. Yes. There was one at Nelson's grocery store in Oklahoma, which is towards the mall in Dubois, and I specifically signed the petition, saying I think John Yount should be freed immediately, and I think I messed up half of their petition because I signed it that way. It was about, I would say, a little over half full at the time.

Q. I don't know whether I asked you—are you related to Mr. Yount?

A. No, I am not.

Q. Do you know whether—what was your father-in-law's name?

A. Homer Ives, Sr.

Q. And he was a prospective juror at the second trial?

A. Right.

Q. Do you know whether or not he was challenged for cause or preemptorily or what?

A. The only thing I can tell you is he was not on the jury. Exactly what ensued at the courthouse, I don't

remember—I don't remember what he said when he came [96] back home. All I know, he was not accepted for jury duty.

MR. SCHUMACHER: Nothing further, Your Honor.

THE COURT: Thank you, Your Honor.

---

*Cross-Examination*

BY MR. BELL:

Q. Do you know John Yount personally?

A. I met John once in my life, and that was in August of this year.

Q. And on what basis was that meeting?

A. I went down to the Camp Hill Prison.

Q. For what purpose, if I might ask?

A. I was invited by his mother to go down to a picnic.

Q. So you went down with his family, more or less?

A. Exactly.

Q. Now, you indicated you reside in R.D. 2, Dubois.

A. That is correct; yes.

Q. Exactly where do you reside?

A. In Farmview Trailer Court, or Cebula, depending on which—

Q. And where is that in relationship to where Mr. Yount's mother lives?

A. She lives on 255, which is—I don't know, a [97] couple of miles from my house.

Q. Now, your father, as you indicated—

A. Father-in-law.

Q. —father in law, excuse me—was called for jury duty; is that correct?

A. Yes.

Q. Was he selected for that jury?

A. I have—no, he did not serve on the jury. No. He was a potential juror.

Q. Okay; but he was not selected?

A. No. I already stated that.

Q. Now, you have testified that there were petitions. You indicated one at Nelson's grocery store in Oklahoma; is that correct?

A. Yes.

Q. Were there any petitions circulated indicating that people favored John Yount, to your knowledge?

A. Yes, there was one. There was an article in the paper, in the back of the paper, opposing the front part of the paper where everything had been put in previously, okay, that anyone who was in favor of John—and this was the only and the first time it had ever been in the paper—that anyone who favored his release, to write.

Q. And who did they write to?

A. I believe it was to a person.

[98] Q. Rev. Swanson perhaps—Swede Swanson?

A. It could be, yes.

Q. So, most recently, we have had petitions floating on both sides; is that correct?

A. Very recently, one.

Q. Do you happen to know whether that petition in favor of Mr. Yount was presented to the pardons board?

A. I have no idea.



MR. BELL: I have no further questions.

MR. SCHUMACHER: I have nothing further,  
Your Honor.

THE COURT: All right. Do you want to step  
down?

(Witness excused.)

MR. SCHUMACHER: Mr. Wade.

---

JAMES V. WADE, called as a witness by and on behalf  
of the Petitioner, having been first duly sworn, was  
examined and testified as follows:

MR. BELL: Once again, may we have an of-  
fer?

THE COURT: Let's first have the witness  
identified.

*Direct Examination*

BY MR. SCHUMACHER:

Q. Would you state your name?

[99] A. James V. Wade.

Q. Occupation?

A. I am a law clerk investigator for the Public De-  
fender's Office.

Q. And in such capacity, did you conduct an in-  
vestigation relating to the presentation of this case?

A. Yes, I did.

Q. Did that investigation include an attempt to  
secure from various radio stations broadcasts pertaining  
to either the 1966 or 1970 trials of the Yount cases in  
Clearfield County?

A. Yes, it did.

Q. Explain—

THE COURT: Mr. Bell, does that satisfy?

MR. BELL: That satisfies me.

THE COURT: Okay.

BY MR. SCHUMACHER:

Q. Explain to the Magistrate what you were able to find or not find and why.

A. Well, I—first, I will go by the radio stations. I contacted Dubois radio station and the Clearfield radio station. The Dubois radio station is WCED, and the Clearfield radio station is WCAT, I think. I may be wrong on that.

Q. T-A.

[100] A. T-A. They explained to me that the records of a radio station are not normally kept for very long. While one radio station tried to keep their news scripts for about a year and the other radio station maybe for a week, they do make attempts to file important, maybe, historic things that happen in the county on file. But a flood in the Dubois radio station had wiped out all their records of such a monumentous event, and, therefore, they didn't have anything regarding the Yount case, because of the temporary nature of their—of what was left from the radio station, and the same was true for the Clearfield station. They both, however, indicated to me that a good barometer of what appeared in the local newspapers also would appear—would have appeared in the shortened version in their newspaper.

MR. BELL: Objection, Your Honor. I think that is hearsay. He indicated that they indicated to him.

THE WITNESS: Well both—

MR. SCHUMACHER: It is merely offered for the purpose of explaining to the Court why we are—

THE COURT: Okay. Go ahead.

BY MR. SCHUMACHER:

Q. The end product is, you are not able to produce for Magistrate Mitchell any radio transcripts of broadcasts that occurred relating to this case; is that [101] correct?

A. That is correct.

Q. You also conducted an investigation relating to newspapers in Clearfield County; is that also correct?

A. That is correct.

Q. Now, for one of the newspapers we were able to secure, you were able to secure copies of the newspapers that are legible and the Court can read, but I would like you to explain for Magistrate Mitchell why the other copies are so illegible.

A. The legible copies—the papers, since they are so old, have been reduced to microfilm and are shown on a screen, and it is hard to copy those, the microfilm. It takes a special process, and the copies that you will not be able to read are copies of this microfilm that is old.

Q. Are they like, then, negatives, rather than the actual pictures of the various articles?

A. Right.

Q. And in order to provide the Court with a summary of what was printed in the two newspapers, what did you do?

A. We had—we hired people that worked for the newspaper to go through the past papers on their machine. They had access to the machine, and they went through and provided a report on the title of the article, [102] the page number of the article, the paper that it appeared in and the date that it appeared, and they have been admitted into evidence as our exhibits.

Q. One and two?

A. One and two.

Q. Now, did your investigation also involve an interview with a Donna Indre?

A. Yes, it did.

Q. How do you spell that last name?

A. I-N-D-R-E.

Q. And where does she live?

A. She lives in Dubois on, I think, West Scribner Avenue.

Q. And did you issue a subpoena for her?

A. Yes, I did.

Q. Prior to the time that you issued a subpoena to her, did she give you any information relating to the matters at issue in this case?

A. Yes, she did.

Q. Did she appear willing to discuss those matters with you?

A. At first.

Q. Now, when did she seem to change her attitude, if at all?

A. After she learned that she was going to be [103] subpoenaed for this hearing.

Q. Have you attempted to contact her since the time you subpoenaed her, to ask her to be present here today?

A. Yes, I have.

Q. With what success?

A. With no success.

Q. Aren't you able to reach her, or does she refuse to come, or what?

A. She—I haven't been able to reach her on any occasion. At first, I surmised she was working, but then I called her after working hours, and the phone has been busy, and I have called her on Saturday, and the phone was either non-answered or it was busy.

MR. SCHUMACHER: Your Honor, I would like to ask you to consider the witness an unavailable witness and ask permission to question Mr. Wade concerning his interview with her.

THE COURT: Well, I think there are ways of procuring her; and she has been served with a subpoena?

THE WITNESS: That is correct.

THE COURT: Has she been instructed to appear at this hearing?

THE WITNESS: I served the subpoena to be—you know, for her to appear at this hearing, but I attached a notice to it that says, "Do not appear unless contacted."

[104] THE COURT: So she has been subpoenaed but not subpoenaed. Well, I would have difficulty finding her unavailable, at this point.

THE WITNESS: We have a statement from her.

MR. SCHUMACHER: Okay. I have no further questions.

MR. BELL: No questions.

THE COURT: Okay. Do you want to step down?

(Witness excused.)

THE COURT: Mr. Schumacher, your next witness.

MR. SCHUMACHER: I call Mr. Yount.

THE COURT: Let me just explain we are going to have to take a recess a little after three, because there has been an arrest. If anyone feels they would like to stand up and take a stretch, I would prefer to keep going.

---

JON E. YOUNT, called as a witness by and on behalf of the Petitioner, having been first duly sworn, was examined and testified as follows:

*Direct Examination*

BY MR. SCHUMACHER:

Q. For the record, sir, would you state your name?

A. Jon E. Yount.

Q. And are you the Petitioner in this case?

[105] A. Yes, I am.

Q. Jon, how old are you?

A. Forty-three.

Q. How many years prior to your incarceration as a result of the case that is discussed here have you resided in Clearfield County?

A. All my life, 28 years.

Q. Did you go to school in Clearfield County?

A. In Sandy Township, which is an area around Dubois.

Q. Graduated from high school there?

A. Yes.

Q. Went to college?

A. Yes.

Q. Where?

A. Penn State University.

Q. And did you get a degree?

A. I received a bachelor's degree in 1958 and a master's degree in education in 1965.

Q. And what did you do for a living, subsequently?

A. I taught school at the Dubois Area High School.

Q. For how many years?

A. Eight years.

Q. What course?

[106] A. Mathematics and chemistry.

Q. Prior to the event involved in this case, had you had any prior criminal record?

Q. No, sir.

Q. And some time during 1966, you were accused of the death of Pamela Sue Reimer; is that correct?

A. Yes, sir.

Q. And you retained Mr. King to represent you?

A. Yes, sir.

Q. Now, without going into all the details of the publicity concerning the case—those matters have already



been introduced into evidence—would you tell Magistrate Mitchell what your recollection is of the publicity that surrounded the murder and the first trial?

A. When I first was confined in the Clearfield County Prison, I was locked in solitary confinement for a period of approximately three or four weeks, under the instructions that—by the turnkeys, that I was being locked there for my protection from the other inmates. Then, I had a radio, access to a radio, and there was substantial news accounts of the incident. Then, during the trial, the first trial, again I had a radio, and I had access to any of the news accounts that came over the news, and it probably made the news every hour, a typical hourly newscast, the fact that—where I was, anything that was happening in [107], the case in terms of investigations, that—and, of course, it was referred to all the time as a rape-murder.

Q. Did that include the preliminary hearing?

A. Preliminary hearing.

Q. Argument?

A. Argument.

Q. Arraignment?

A. Yes.

Q. Voir dire selection?

A. Yes.

Q. And the trial of the case?

A. Trial of the case.

Q. It covered—and describe what news media.

A. The news media on the radio, primarily. Of course, I had access to newspapers occasionally, and there were periods of time when I was allowed to be on the regular cell block population. Clearfield County was a

very small prison, at the time, and I was permitted to be on the cell block from time to time, or every two weeks or so. The warden would come in and explain to me he had to lock me up because there were some news articles in the paper, and they feared for my safety, and then the sheriff would have me locked up for a period of time, and then—I would be locked up for a matter of a week or so, and then I would be allowed to be back on the cell blocks.

[108] Q. What was your defense on the case?

A. Not guilty by reason of insanity.

Q. And the police officers testified concerning a statement that you had given; is that correct?

A. Yes, they did.

Q. And psychiatrists testified concerning your mental defense?

A. Psychiatrists and a neurologist.

Q. And you testified?

A. Yes.

Q. And that was a rape-murder case?

A. Yes, it was.

Q. And you were convicted on both counts?

A. On both counts.

Q. And sentenced to life imprisonment?

A. Yes.

Q. Describe for the Court the number of spectators that normally appeared during the course of the trial.

A. At any time that I observed—turned around, of course, to look back over the courtroom, and that was—normally, was to contact my family, I had contact with my family—there was—the courtroom was always packed, during the first trial.

Q. Covered by the news media?

[109] A. Yes.

Q. Reporters were in the courtroom?

A. Yes.

Q. How about when you testified? Do you remember what type of audience you had then?

A. Of course, that was the one time I did face the entire courtroom, and it was packed, and I could see people in the hallway, in the back, through the open doors.

Q. Do you recall what type of crowd was in attendance at the time your verdict of guilty was pronounced and you were subsequently sentenced to life imprisonment?

A. As I recall, the courtroom was fairly full; yes.

Q. Now, subsequently, your attorney indicated that he filed numerous legal pleadings on your behalf and an appeal.

A. Yes.

Q. Was that covered by the news media, or had things died down?

A. At that time, I had been transferred to the Western State Penitentiary, and the only access I had to news articles and so on, at that time, were those that were sent to me through letters, and so on, from my family. And then, later, I was transferred, in December, to the State Correctional Institution at Rockview, and I also [110] continued to read newspaper articles that were sent to me by my family, as well as some other inmates that were there from Clearfield County, who were there.

Q. Did your transfer out of Clearfield County have to do with the attitude at that time?

A. When I was sentenced—and I was sentenced immediately upon the guilty verdict being returned—Judge Cherry ordered the sheriff to remove me immediately to

the Western Penitentiary, the diagnostic center there. When we returned to the county prison, it was rather late, and I was told that I would not be transferred till the following morning because of the late hour and the darkness and so on, and that they were concerned of an incident during the dark hours. The following morning—it was just barely light—I was awakened and taken to the front of the jail. Sheriff Sharney was the sheriff at that time—was there and told me that we would go out the side door, and I was under the impression, from the activity there, that they were concerned about anyone who might be out in the front of the county prison. When I stepped out the side door—there were six steps leading down the side of the county prison—when I stepped out the side door, there were five or six photographers—I assumed they were newspaper photographers—and I was held by the arm, by the sheriff and his deputy, at the top of the steps, until [111] they finished taking their pictures, and then we proceeded down the steps, and I was taken to the penitentiary.

Q. What time of the day do you say that was?

A. No later than seven o'clock.

Q. A.M. or P.M.?

A. A.M.

Q. What day was that?

A. I don't recall the day, but it was the day immediately after I was sentenced and the verdict was returned.

Q. And then you were incarcerated where, during the pendency of your appeal?

A. Three months at the Western Penitentiary, as it was called then, State Correctional Institution in Pitts-

burgh now; and, from December of 1966 until the retrial, at the State Correctional Institution at Rockview.

Q. And your conviction was ultimately reversed by the Supreme Court of Pennsylvania?

A. Yes.

Q. And what happened then? Were you brought back to Clearfield County to stand trial?

A. When the reversal was first announced, I had anticipated coming back, but there was a long delay because of the appeal of Clearfield County, the Commonwealth, to the United States Supreme Court. During that time—and I [112] am not sure who solicited his involvement in the case, but Arlen Specter, who was the District Attorney of Philadelphia County, came into the case and took over the case for Mr. Reilly, who was the District Attorney of Clearfield, and tied my case to a triple murder homicide in Philadelphia that was being argued on the Miranda issue as well, and those two cases then were publicized, and, in fact, I am certain I have a copy of the brief of the Commonwealth. It was done under Arlen Specter's name and sent to the United States Supreme Court for certiorari, which was denied.

Q. And those proceedings were also covered by the news media?

A. Yes.

Q. And the petition for certiorari was denied?

A. It was.

Q. And then you were returned to Clearfield County to stand trial?

A. I was returned for the preliminary hearing some time in early 1970. I think it was probably in June, prior to the first change of venue hearing. When I was re-

turned, I was put in the juvenile quarters. There are two rooms in the front of the prison that is isolated from the remainder of the county jail, and I was put in there, in isolation, because, as I was told by the warden, I was put there for my own protection, because they feared for my [113] safety.

Q. How old were you at that time?

A. Thirty-two.

Q. Had the community reaction to the slaying subsided by the time your second trial proceedings were beginning?

A. I had no evidence of it having subsided from—the only contact I had was with the authorities in Clearfield County, who kept me imprisoned there, and through the newspaper and radio accounts I heard.

Q. Did you have access to a radio then, too?

A. I didn't have—I could hear it coming through the wall from the main prison, all right. I could hear a radio being played, because of a cell that wasn't too far away. I could hear the newscast and music coming through.

Q. Did you ever hear anything relating to your case?

A. Yes. On the news, the fact that I was there for a hearing, yes.

Q. Now, as the case approached trial, Mr. King filed numerous motions on your behalf; is that correct?

A. Yes, he did.

Q. And many of those motions dealt with a request for a change of venue?

[114] A. Yes.

Q. Did he ever discuss those matters with you?

A. He explained to me that he was filing those motions, yes, and that he was attempting to accumulate newspaper articles and so on to verify our allegations.

Q. Did you understand why he was filing that request for a change of venue?

A. I understood; yes.

Q. Is that what you wanted, too?

A. Yes.

Q. Why?

A. Because I didn't feel there was any way I could get a fair trial in Clearfield County, considering the fact that the County had been pretty well saturated, over the years, with evidence that would not become an issue at the second trial, and this was very detrimental to me.

Q. What do you mean by that? Explain explicitly what was involved in the first trial that wasn't involved in the second trial, that you were concerned about.

A. Well, first of all, the major issue was that I knew the rape issue was no longer going to be tried, or reasonably sure it was not going to be retried, and I certainly didn't feel the citizens of Clearfield County would wipe that from their memory. Also, the fact that I had allegedly given a detailed confession to the State [115] Police regarding the crime that had been—that was the reason for the reversal, originally, and the fact that I had taken the stand during the first trial and testified regarding my guilt, in terms of the homicide. But I just felt that, considering all of those facts, that it would be very difficult to find a jury in Clearfield County that could assume that I was innocent.

Q. Were portions of the statement that you gave to the Pennsylvania State Police suppressed by the Pennsylvania Supreme Court?



A. Yes, an oral statement, rather lengthy oral statement, and a written statement were suppressed.

Q. And those statements were reported by the news media at the time of your original trial?

A. Yes.

Q. Now, when the voir dire began for the second trial, were there people in the courtroom, or weren't there, other than the jury panel and the court personnel? Were there any spectators?

A. The first day that the voir dire began, there were approximately a hundred people in there, that were called for prospective jury duty, and, when you look at that many people in that small courtroom, it appears to be full, but, when they were sequestered, upon our motion that they be sequestered, the courtroom emptied out rather quickly, and I [116] am not so sure there was that much room in there for spectators. They may have found it difficult to find a seat when they came in and found that panel of jurors there. After that, there was a sprinkling of people throughout the courtroom, yes, and I would say that, whenever I turned around, there appeared to be 20 or 25 people, at least most of the time, around.

Q. Now, the selection of the jury and voir dire questioning took a number of days; is that correct?

A. Yes, it did.

Q. The record will reflect how many. Do you remember approximately how many?

A. Approximately eleven days, I recall.

Q. And the number of people you described, were they commonly in the courtroom on a regular basis, or was that unusual on a particular day, or what?

A. I saw a lot of the same faces, and I am not sure there weren't people who work in the courthouse, because when we began this voir dire, the Judge had ordered the doors closed, because—again, I was not part of the discussion between my counsel and the District Attorney and the Judge, but I had the impression, from discussions with my attorney, that they were concerned again for my safety, is one of the factors in keeping the doors closed, and, in fact, they had attendants stationed at the door, and, some time during the [117] voir dire, the Judge told the door attendants they were not to keep people out, that was not the intent, it was open to the public. So I am not sure what effect that had on the general public, coming into the courtroom, but, when I saw people back there, they looked like people that had jackets on and may have been hanging around the courthouse anyway.

Q. How about when the trial started? Was there as much interest in the second trial as the first?

A. I am sure the courtroom was full for the trial itself, and, in fact, there were at least one or two classes was brought into the courtroom to observe this trial and courtroom procedure, from high school.

Q. Do you recall any incident taking place during the second trial that caused the courtroom to be emptied, spectators not to be permitted in the courtroom?

A. I don't recall it being emptied, other than for—it may have been emptied at one time for a hearing that we had, a closed hearing, but I don't recall it would have been emptied for any other reason.

Q. Do you recall whether any threat was made to you during the second trial?

A. I received no threat, directly, but I do recall that there was a discussion between my counsel, and I was told

—my counsel and the Judge—that they had been warned of a weapon had been taken from a spectator, and [118] that they were concerned about the safety of not only myself, but also people in the courtroom.

Q. What happened as a result of that?

A. Well, I understand the people were being searched.

Q. Was the courtroom emptied or closed or anything like that, as far as you can recall?

A. The courtroom was not emptied, as I recall, nor was it closed, but they would be suspicious of everyone coming in, and they were checking.

Q. Now, the petition for writ of habeas corpus filed in this case was filed by you pro se?

A. Yes, it was.

Q. In other words, you weren't represented by counsel at the time you prepared it?

A. No.

Q. But, since the time of your second conviction, did you have an opportunity to examine the transcript of the second trial?

A. Yes.

Q. And did that include the voir dire questioning of the jurors?

A. Yes.

Q. Did you go over the testimony of those jurors in considerable detail?

[119] A. Yes.

Q. Now, there are many figures set forth in the petition you filed. To the best of your knowledge, are those figures accurate and correct?

A. Yes, they are.

Q. In other words, you have called Magistrate Mitchell's attention to the fact that certain witnesses—certain jurors testified that they had fixed opinions of guilt or innocence.

A. Yes.

Q. How did you arrive at that conclusion?

A. Rather a laborious process, but I went through the entire voir dire and wrote down the juror's name, as they were being examined, their locale, in terms of Clearfield County, because I wanted to be sure that there was an even representation of Clearfield County, and whether or not they had fixed opinions, whether they had read newspapers, or stated that they had, testified that they had, heard newspaper accounts, radio accounts, television accounts, and so on. But I went through each one, kept a checklist, and tried to calculate a percentage of how many of those had declared to have fixed opinions.

MR. SCHUMACHER: Will you stipulate to this exhibit, for whatever purpose the Court deems necessary? It is Petitioner's Exhibit No. 4, which is a map of Clearfield [120] County, Your Honor.

BY MR. SCHUMACHER:

Q. I show you what has been marked Petitioner's Exhibit No. 6 and ask you what that is.

A. (Examining document) This is a listing of all the jurors, prospective jurors, who were processed through voir dire during my second trial, and it contains an indication on here of the area that they were from—Clearfield, Dubois, Curwensville, and all of the smaller towns—as well as the page number on which their testimony began, and also indicating which ones were preemptorily chal-

lenged by the defense, which ones were preemptorily challenged by the Commonwealth, which ones were challenged after the—after they were seated as jurors, after the preemptory challenges were exhausted. And, also, I drew a little square around those who ultimately became jurors.

Q. And is this an example of the procedure you used in studying the transcript of the voir dire, that you used to submit the figures to Magistrate Mitchell?

A. Yes, it is. There was a second page to that, but that does not include all the smaller towns. There was a second page to that. It was much more detailed on the second page than that, but that does generally describe the procedure I used.

Q. And does that accurately reflect what appears [121] in the transcript of the voir dire proceeding?

A. It accurately reflects all questioned jurors, except two. One was a witness and was to be a witness at the second trial, and so he was dismissed as soon as his identity was learned, and the other one had a medical problem—I believe it was asthma or something like that, and her condition was evident, and so the trial judge dismissed her immediately.

Q. I will show you what has been marked for identification as Petitioner's Exhibit No. 7, and I would ask you to tell the Court what that exhibit is.

A. This is a continuation of what was marked as Exhibit 6, and this identifies the prospective jurors who came from much smaller areas, smaller towns, but it was done at the same time Exhibit 6 was done, and it was done in the same manner.

Q. And does that accurately reflect what appears in the voir dire transcript?

A. Yes, it does, and it also includes the number of jurors, on the first page, that was examined in each of the jury panels.

Q. And is that the second sheet that you previously referred to, when I showed you Exhibit No. 6 and you said there were really two sheets to it?

A. It is.

[122] MR. SCHUMACHER: I offer the exhibits in evidence, Your Honor.

MR. BELL: Your Honor, at this point, since I have not had a chance to check that and compare it to my sheets, I think the record will speak for itself whether the people were preemptorily challenged or not, but we will agree he used the records of the court and he arrived at that.

THE COURT: All right. The records are here, and they will speak for themselves, but they will be admitted.

(Petitioner's Exhibits Nos. 6 and 7 were received in evidence.)

BY MR. SCHUMACHER:

Q. Of course, you were present in court when Mr. King—when the voir dire questioning of the jurors took place.

A. I was.

Q. And you heard the testimony of the various people when the selection procedure occurred; isn't that correct?

A. Yes.

Q. Now, from the charts that you have prepared, some of the jurors expressed certain opinions that were relevant either to you or to Mr. King or both of you, in exercising challenges and so forth; is that also correct?

[123] A. That is true.

Q. Now, explain to the Court the significance of that, as it relates to your petition for writ of habeas corpus.

A. Well, it was obvious that almost all jurors who were—prospective jurors who were examined during voir dire had had contact with media coverage of these cases or through the discussions, and had opinions, so it became a matter of trying to weed out or weed in those who had the least strongest opinion and hoped that you could get a fair trial from those, so that, when it became evident, when we went through this voir dire, that so many people from throughout Clearfield County had been exposed to this publicity and had fixed opinions, then we had to decide we would take this juror, even though there was no way in the world we would take him anywhere else, and Mr. King would say, "What do you think of this guy," and I was concerned about the way they were answering questions, because they obviously had some opinion, and there was only one, I think Juror No. 4 had not even been in the area at that time, who I really believe did not have an opinion in this case, and he had been in Ireland or someplace when this happened. And he asked me what I thought about these people, and I was concerned about all of them, and his answer was, "This is probably about as good as we are going to get, and these [124] people may be somewhat educated and understand the issues of the case, and we have to take a chance on somebody." That was his substantial explanation, "We have to take a chance on somebody, because it doesn't look like we will be able to try this case anywhere else."



Q. From what you heard, do you feel you were able to select a fair and impartial jury from Clearfield County, at that time, at the second trial?

A. Certainly not.

Q. Is that true, whether or not a specific juror was challenged for cause or preemptorily or not at all?

A. It didn't matter. It was evident there was no way to get 12 jurors in that county in what I would say would be a fair and impartial jury.

Q. You heard Mr. King testify concerning the incident that occurred when the sheriff went out and got the panel he challenged.

A. Yes.

Q. Will you explain what, in your recollection, occurred?

A. The second panel that was brought into the courtroom was done at the orders of the Court, of course, and the sheriff and several of his deputies went out and personally selected those prospective jurors. In fact, one [125] deputy testified to the fact—certainly, Sheriff Sharney did not select them all, but one deputy testified to the fact that he had gone to pick up one juror and called that juror, who they thought might be good jurors in that area, and then went to their houses and delivered these subpoenas, and that is how that panel came into existence. And, of course, it was challenged, and Judge Cherry dismissed it.

Q. Excuse me. I want a clarification of that, because you say "good jurors." What do you mean by "good jurors"? Good for you?

A. Certainly, I didn't think Sheriff Sharney was concerned for my welfare, and that is not what I thought they were looking for, but that was the deputy's words, they thought they would make good jurors. And I was not

going to trust this trial to their jurors, who I thought were very prejudiced employees of the County.

Q. Did you think those jurors were prejudiced against you or good for you?

A. I felt they were prejudiced against me, if not because of being chosen by the deputy, just because they lived in Clearfield County.

Q. What happened then, as far as the selection of the next panel is concerned?

A. As I recall, the decision then was to use the jury wheel, and I think Mr. King was right in saying that [126] the Judge told the sheriff to go out and pick these people up and bring them in. That was pretty much the instruction of the Court, but, during the interim, the County Commissioner was—called in not all of them at one time, but the number that was believed to be adequate, which started out with 25 or 30 names, called the first page, and then, as we added more people to the actual jury, then the number of names drawn were reduced.

Q. How many panels do you recall were called in?

A. I recall that, definitely, five panels, in addition to the one that was challenged, and, as I recall, there was a sixth one called, and that is the one in which we finally filled out the jury, on the sixth panel.

Q. Did an incident occur, some time during the voir dire questioning of potential jurors when the Judge intervened, in connection with a motion for change of venue?

A. To me, there were a couple of outstanding things about that voir dire that really sticks in my memory, and that was one of them, for a lot of reasons. It was at the end of the fourth panel of jurors, and we had already completed the selection, I believe, of the regular panel, and we

were looking for alternates. We began at approximately nine o'clock in the morning, a little after nine o'clock, with nine or ten jurors—I believe there was a panel of ten called—and the Judge gave his usual preliminary [127] instructions to the jury panel, these prospective jurors and that lasted—it probably lasted maybe ten, fifteen minutes at the most. We went into the examination of these jurors, and this was well into the voir dire, and I think that November 10 or 11, something like that, and maybe even later, but, at any rate, we got through that panel of jurors before ten o'clock, and it was—I can recall that, because we were—what we were going to do, we started at nine o'clock, and before ten we exhausted this panel and, if we were to continue, we would have to get the jury wheel and go through another day's delay.

Q. Excuse me. If I can complete your testimony in this regard, is it your recollection that all ten of those jurors were challenged for cause?

A. All ten were challenged for cause. As I recall, juror after juror got on the stand and said they had a definite fixed opinion, and whether they were being examined by the District Attorney—most that were examined by the District Attorney were not examined by Mr. King, because they already made a statement that disqualified them, so they were immediately disqualified and challenged for cause, and the challenge for cause was granted by the Judge. And, when the last one was challenged, the reaction of the Judge was, "Challenge for cause is granted" and he promptly [128] stood up, banged his gavel on the bench, and said, "We just can't go on like this. We have to be concerned about the Defendant's rights," and he never said court was recessed or anything else, he turned and went out the back door, and the whole courtroom was in shock. When it happened, it was very

quiet, and I remember Mr. King saying to me it looked like something was going to happen. It was obvious something was going to happen, because the Judge was very distressed, and, we waited maybe five, ten minutes, and the Judge came back and said that the court was now in session, and I don't recall him ever recessing it. And he got into a discussion with the District Attorney, saying that something had to be done about this case, it was obvious that we couldn't get a jury.

Q. Now, before you go any further, was that discussion made a part of the record?

A. No, sir, because, when he came back—when he came back on the bench and said, "We are ready to start," and he had been—he started the discussion with the District Attorney and my counsel, regarding the difficulty in getting this jury, and I don't recall his exact words any more, but that was the discussion, and he looked down, and he said, "Are you transcribing this," to the reporter, and she said she was, and he says, "Well, you don't have to do that. This is not part of the record. This does not [129] have to be transcribed." And she quit, and she sat back, and the Judge continued and ordered the counsel for the Commonwealth and my counsel to prepare briefs, that there would be a hearing held that afternoon in the courtroom at 1:30 for a change of venue. And, up to that point, Mr. King hadn't said anything, that was done solely on the Judge's initiative, and he went on to discuss this whole thing. Of course. Mr. Reilly was rather perturbed by the whole thing, and they got into a discussion with the Judge regarding this proposed hearing and the fact that the Judge seemed rather set on doing something about a change of venue. And the Judge was rather hard on the District Attorney, at that point, trying to explain to him that he felt we had gone beyond the point

where we could assure the Defendant a fair trial, as he described it.

Q. Approximately how long did that conversation or hearing take place, that you are now referring to?

A. Somewhere between a half hour and an hour. It was in that general area.

Q. Is any of that hearing reflected in the transcript?

A. No, sir. It appears nowhere in there.

Q. Is there anything in the transcript to indicate anything took place, a recess or something like that?

A. Well, as I was searching for it in the record—[130] and it took me a while, because I remember it very vividly happening, and I looked for it in there. I could not locate it for a while, but then, by remembering that they had nine or ten jurors, I finally placed it down to where we had started in the transcript—it said we had started, for example, at nine o'clock. The court reporter stated on this date court was in session at nine o'clock, all right, and allowing ten or fifteen minutes for the Judge's instructions to each panel of prospective jurors, and the nine jurors were maybe only two or three pages each of voir dire examination, which is very short—in fact, they weren't even examined by both counsel, most of the time. So I would suppose most of them took less than five minutes to examine, but, at any rate, I recall it was before ten o'clock, and I think the record then—if you would look it up in the voir dire, that time is reasonably accurate. At any rate, it shows the jury being recalled after eleven o'clock, and I think it was after 11:30, the jury was recalled, and instructed by the Judge that we were going to take a recess, and that—and, as usual, instructed the jury they weren't supposed to talk to anyone, and so on. But that does show it is upon the record that, after 11:30, he did call the jury back, and there was some-

thing that went on in the courtroom between 10:00 o'clock and 11:30.

Q. Is this the time you were most optimistic [131] that a change of venue would be granted?

A. Yes, I was very optimistic then, and, of course, I was ordered taken back to the county prison for lunch, and two of the State Police officers who returned me to the county prison, Trooper Gorman and Trooper George, were discussing with me where I thought this trial was going to be sent to, and, of course, Trooper Gorman, who is from Fayette County, was concerned about it coming to Fayette County, and he wanted to go to Fayette County, and Trooper George thought it would go to Mercer County, because Judge Cherry had a friend up there that was a county judge, and they were certain that is where it was going to go.

Q. Meanwhile, what happened?

A. We had a delay, because one of the jurors' sisters died, and she had to be dismissed.

Q. Was that Juror No. 3?

A. That was Juror No. 3; yes. So the Judge excused her, and there was some discussion, then, regarding how they were going to handle the seating of that juror, because we had already seated the panel of jurors, the regular panel. So then we had the hearing, and that lasted until rather late in the afternoon, because it didn't start until about 2:30, maybe 3:00 o'clock, and it was scheduled to start at 1:30. It started rather late, and then, the next morning, the—or the Judge told us, at the hearing—[132] or no—the Judge told us, that morning, after the hearing, he would—he set the motion for 10:00 o'clock. He came on the bench and said the motion was denied and called for the jury immediately. There was no explanation given in open court.

Q. Was it unusual for an argument or hearing to take place and not be included as a part of the transcript?

A. Well, as I was examining the voir dire, I noticed that there were five or six places in there, at least, that discussions were held at side bar, that were not recorded, and, of course, there is reference made to meetings in libraries and in the Judge's chambers, and so on, that don't appear of record, either.

MR. SCHUMACHER: May I have a moment, Your Honor?

THE COURT: Why don't we just take three or four minutes, and I will find out the status of what is happening with our other case.

(A brief recess was taken at 3:00 p.m. o'clock.)

MR. SCHUMACHER: May I proceed, Your Honor?

THE COURT: Would you, please?

BY MR. SCHUMACHER:

Q. I was referring to other pages in the transcript where hearings or arguments were held, and no [133] record was made. Did you make an examination of the transcript, to present such examples to the Court?

A. I did. I noted several places throughout the voir dire transcript where reference had been made to side bar discussions and arguments, legal arguments and so on, had not been made part of the record.

Q. Would you state the pages of those transcripts where such hearings or arguments occurred?

A. Yes. Page 86, the Court noted that, "We will recess for legal discussion and resolve this once and for all," and that is not made a part of the record.



On page 706, the District Attorney asked to approach the bench, and all counsel approached the bench, and, obviously, there was a discussion, but it was not made part of the record there.

Page 724, Mr. King asked to approach the bench, and, again, there is a note, all counsel approached the bench, but there was no record made of that.

Again, Mr. Sabino, at page 962, all counsel approached the bench, and the witness was asked to step down from the stand, but there was no record made of that.

And, at page 1117, Mr. Fine, the Assistant District Attorney, asked to approach the bench, and note is made that all counsel approached the bench, and there was no record made of that.

[134] Q. Did any occurrence take place during the voir dire questioning, where it appeared to either you or Mr. King that the Judge would grant the change of venue motion?

MR. BELL: Objection, Your Honor, to the question as stated. He can testify that it appeared to him; I don't know that he can testify it appeared to Mr. King.

THE COURT: Do you want to rephrase it?

MR. SCHUMACHER: I will restrict it to the objected to question.

THE WITNESS: Certainly, the instance to which I previously testified, when the Judge left the courtroom; but, prior to that, I was informed by my counsel, Mr. King, that—

MR. BELL: Objection; hearsay.

MR. SCHUMACHER: I feel this is within the scope of Mr. King's representation of Mr. Yount, and it isn't offered for the proof of the facts asserted therein.

THE COURT: Okay. Go ahead.

THE WITNESS: I was advised by my counsel, Mr. King, that Judge Cherry had informed him that he would change the venue, as Mr. King testified to here earlier today, and that he then used a lot of preemptory challenges, not unjustifiably, I didn't feel, but at least he used them with less discretion than he had previously, to that point.

[135] BY MR. SCHUMACHER:

Q. What was your understanding had to take place in order for that request for a change of venue to be granted?

A. Well, I felt that—I believe that we had to exhaust the panel without getting a full jury.

Q. In other words, if you didn't seat a full jury by the time a given panel was exhausted, the motion for change of venue would be granted?

A. That is the message that had been relayed to me by my counsel.

Q. Was there any discussion concerning the number of preemptory challenges that you would receive in the case?

A. Originally, it was set at twenty, by statute, and I don't recall whether that was discussed in the courtroom, but I do recall it was mentioned by someone, whether my counsel or an actual courtroom discussion, but, throughout the voir dire, the number of preemptory challenges kept changing. At one point, as I recall, there was several

times there were jurors that we had to challenge preemptory, and then Mr. King would ask the Judge to reconsider the Court's decision not to grant a challenge for cause, and, if I recall, at one case, the Court did later, after we had used a preemptory challenge, and reinstated the [136] preemptory challenge, saying, in the interest of justice, that he would now change his ruling regarding that one particular witness or that one particular prospective juror, and then, when the juror was excused because the sister had died, there was some discussion regarding how many preemptory challenges would be allowed to replace this juror, because we had already selected a panel of jurors, and, of course, defense counsel argued for two jurors, and the Judge finally established that there would be one preemptory challenge given now, to fill that vacancy on the regular panel, and we went under that assumption, until we used that preemptory challenge almost immediately, and then the Judge changed his mind, well, he would grant two, but we had already used the one, as we had originally requested. So, throughout the voir dire, these kinds of discussions were held regarding how many preemptory challenges we were going to be allowed. At one time, there was a discussion regarding how the challenges for alternates would be, because we had used our twenty, because we had challenged a juror for cause, and we recognized we were out of challenges, and the Judge says, "You still have your two for alternates, so you can use that." Again, I can't say, but I recall that the Judge had said he had been given a case by the Commonwealth, and he read from it and said that that had been a ruling in error, that we were not allowed these preemptory [137] challenges set aside for alternate jurors against the regular panel. So that discussion also came up.

Q. Finally the twelve jurors and the two alternates were selected; is that correct?

A. Yes.

Q. Now, at that time, did you feel that you had a panel of twelve jurors and two alternates that could fairly try your case?

A. No, sir.

Q. Why?

A. I could only recall one juror who had not expressed an opinion regarding my guilt, and that was Juror No. 4, and, like I say, that juror testified that he had been in New York when this incident occurred, so—and all the other ones had given reason to believe they had opinions, that they may have not been telling the truth in its entirety, and they wanted to be on the jury, and that would not have been too difficult to do, but almost all of them said, at one time or another, they had an opinion, and I couldn't imagine how anyone could erase an opinion from their mind, in spite of the fact they said they would try. I have no doubt they were probably expressing what they thought they could do, unless they were deliberately lying to get on the jury, and that, I wouldn't know, but I thought they were trying to say what they would try to do, but, after listening to [138] their testimony and listening to them speak, in person, that they could do that—

Q. I previously discussed with you the number of spectators in the courtroom and community interest during the course of the second trial, so I won't repeat that questioning. Now, following your conviction the second time, did community interest then subside?

A. Again, I was at the State Correctional Institution at Rockview. Following that, I wasn't sentenced immediately, I was returned to Rockview as an unsentenced

prisoner and remained there until such time as the trial Court denied post-trial motions. And, during that time, I did receive some newspaper articles from my family and noticed some in the papers received from inmates in the Dubois—Clearfield area, but, over the time, it did subside somewhat, in terms of newspaper coverage, and I was not in the area to review television or radio coverage, so I would not be able to testify to that.

Q. From the—strike that, please.

A. Incidentally, I may add to that that, at Rockview, which abuts Clearfield County—it is in Centre County—there were many people at Rockview that were in Clearfield, especially, and they related to my case, to my—or attempted and represented to me the feelings in their area, the correction people.

[139] Q. Mr. King continued with post-trial motions, I believe you indicated, and, subsequently, an appeal again to the Supreme Court of Pennsylvania; is that correct?

A. Yes.

Q. Were those incidents reported by the news media, as far as you knew?

A. Yes.

Q. On numerous occasions, you have gone before the Parole Board for a consideration of release on parole; is that correct?

A. Board of Pardons, yes.

Q. Board of Pardons. As far as you know, have those matters had community interest in Clearfield County?

A. Yes. When I first applied for clemency or commutation to the Governor, which is the way it is done in

Pennsylvania, the application received almost headline response in the newspapers. More recently—and I have applied eight times—more recently, they have received a lot less space in the newspaper, but, inevitably, they appear on the front page, and—at least, that is what I see in many papers I happen to receive from Clearfield County or that are sent to me.

Q. You have heard some testimony here concerning petitions opposing your release. Do you have any personal knowledge or information concerning those, that you want to [140] call to the attention of the Court?

A. I have no personal knowledge, because I do not attend hearings. You must have an advocate there. I have no personal knowledge, other than what he told me. They were delivered by the District Attorney or the Assistant District Attorney or those opposing it.

Q. As I previously indicated, the major issues—in fact, all of the issues that are present at this hearing and on which testimony is being presented today were raised by you; correct?

A. Yes.

Q. And the factual basis for those issues was also raised by you in the pro se motion that you filed?

A. Yes.

Q. Now, I have attempted, as your Court-appointed attorney, to present any and all evidence that I thought would support that, but, if you have any additional testimony that you want to give to Magistrate Mitchell, I ask you now to do so.

A. Well, from the very outset of the voir dire, I was convinced that Judge Cherry was really set on the trial staying in Clearfield County, and I think that he tried to

do a lot of things to overcome the prejudice that I am sure he was aware existed in that county. For example, he added these preemptory challenges, from time to time, and [141] he stated it would be done in the interest of justice. One time, during the trial, I recall the Commonwealth complained—the District Attorney really complained about the manner in which Mr. King was questioning jurors, saying he was leading them, and he was getting into areas that weren't permissible, and that was the cause for these people having to be excused for cause, because he was making them say things they really didn't believe. So, of course, Judge Cherry said, "Okay, I will initiate the questioning, I will explain certain things to them," and he did that, and I am sure he was doing that to—maybe believing that it was my counsel and leading questioning was doing it. He did that for, maybe, eight, ten twelve jurors and quit, because it didn't matter. He had tried to eliminate what the Commonwealth is complaining about and, still, these jurors had fixed opinions, and they said, "No way, I made up my mind and I won't change it, I cannot change it." And I think he realized, therefore, that his attempts to overcome this prejudice in that regard was useless, and he just quit doing it, and, as I say, throughout the trial, he would say, "I am going to give you another preemptory challenge, I am going to give you another one," and he made up his mind that trial was going to stay in the county, whatever reasons he had, and he was trying to overcome the prejudice, but he could not do it. It was evident whatever [142] he tried was not going to work. I think one of the most telling examples—and it came up today, about the one witness having a father-in-law that was a prospective juror, and I didn't realize that



until about a week ago, when I was reading the transcript, and her testimony surprised me, saying that her father-in-law was so opposed to me and before he even went to Clearfield, because, reading his testimony in voir dire, he said he had no opinion. He stated his wife had one, and he even admitted his daughter went to school where I taught, and he said he didn't have an opinion, and we could not believe him. We couldn't believe anyone who went to that school and had a daughter in the same class as Pamela Reimer and whose wife had an opinion could sit up there and say that, and it was impossible to believe these people could sit up there and say that.

So the preemptory challenges Mr. King was using were not wasted. I think he used some discretion at some time because of the agreement he felt we had with Judge Cherry, but I think this Mrs. Ives, if there is any truth in what this witness said, that her father-in-law had a fixed notion when he went over there, I think this is generally indicative of the people's feeling. You could not believe these people getting up there, saying they could abide by the law and give me a fair trial, because, every time they got up there, Judge Cherry said, "It is your duty as a juror to [143] put these things out of your mind," and it is difficult for the people to say, "I can't do that, I can't be a good citizen." Maybe some of them did not believe they were prejudiced. Maybe they were sincere in that, and they didn't feel they were prejudiced, and they could dismiss it; but we didn't believe them, and I didn't believe them, and, as a result, I didn't feel there was a way we could get a fair trial there.

Q. Therefore, you felt that you were denied a trial by a fair, impartial trier of fact in Clearfield County?

A. Very definitely so. I cannot believe that a jury could sit there and listen to the evidence that was presented and recall all these things that have been discussed and written and appeared on television, and come to a fair conclusion about this case, especially absent the charge of rape.

MR. SCHUMACHER: No further questions.

THE COURT: Mr. Bell.

---

*Cross-Examination*

BY MR. BELL:

Q. Mr. Yount, that opinion you just stated for us—you didn't feel you could get a fair and impartial trial—is that based upon your reading of the transcript of the voir dire, your opinion of actually being there and [144] actually watching the process take place?

A. Yes, both of those; and, of course, just the feeling I had when I would be returned to Clearfield County, for example, and put in the county prison, the obvious concern for my safety and so on, it didn't seem to be apparent for any of the other prisoners there. And, while I was there, there was another prisoner brought in that was in there for homicide, as well, and they didn't seem to be as concerned about him as they were in my case, and that whole feeling came through to me, and they said it was about publicity that came out because of a newspaper article or something. And I really feel you sit there and listen to so many hundred people sit there and said, "I think you are guilty," and there is nothing to change their mind, until you really get an opinion, yourself, that they are expressing the attitude of the county.

Q. Did someone actually indicate to you—you indicated, when you were brought back, they put you in solitary. Did they ever actually indicate to you what the purpose of that was? Did someone say, "This is for your own protection"?

A. Yes. When I was brought back to the first change of venue hearing in June of 1970, they told me I would be put in the juvenile quarters. There were no juveniles in the prison, and I would be isolated from the [145] general population because they feared for my life, and they had had threats on my life. Again, I couldn't verify that. And, when I was initially put in the county prison, periodically I would be put out in the population, and mostly at the urging of the other prisoners, "All right, let him out," that type of thing, and, eventually, they would agree to that, and, eventually, they would come in and say, "We have to lock you up. There was an article in the paper today, and we are just afraid of what might happen."

MR. BELL: I have no further questions.

THE COURT: Mr. Schumacher, anything further?

---

*Redirect Examination*

BY MR. SCHUMACHER:

Q. This one thing the Commonwealth raised, in answer to your petition, that I would like you to respond to, and that is the delay that took place in your filing. I think you should explain that to the Court, as well, since the period of time has passed since you exhausted your state remedies before you filed your petition. Would you please explain that to the Court?

A. As I recall, my appeals within the state were exhausted in 1974, when the Supreme Court affirmed the decision of the lower court, and, of course, I had no personal contact with Mr. King at that time, because I was, at that time, at Camp Hill, had been transferred to Camp Hill, and [146] he was in Pittsburgh. So I wrote to him and asked him if we were going to continue this further and so on. He advised me—and I believe that I sent you a letter or I gave this letter to you—but he advised me that he didn't feel that we could have success continuing our appeal in the Federal Court, because we would have to appeal directly—our only appeal was directly to the Supreme Court, and he didn't feel that they would grant certiorari. And, of course, at that time, I had no knowledge of habeas corpus or any Federal petitions, really, and I just accepted his judgment on that, it would be similar to the certiorari the Commonwealth had made at the time my conviction was reversed. And he also said his responsibility to me as counsel had ended with that, and we would have to make some other kind of arrangements, financial arrangements, and so on, and I didn't feel I had any finances, at that time, to continue, so I just didn't pursue it.

Q. In other words, you didn't know about this avenue of relief until recently?

A. I didn't—I think almost anybody who has ever been in prison has heard about a habeas corpus petition, but everyone's idea of what it is is altogether different, and my experience had been very limited, in terms of any legal expertise, and, at any rate, it wasn't until later that I got involved with the Federal—different types of Federal [147] petitions, and I realized that I had this avenue open to me, and that is when I filed the petition.

MR. SCHUMACHER: No further questions.

THE COURT: Mr. Yount, I want to ask you, is there anything else you want to add? I know Mr. Schumacher asked you that once, and I just want to ask you again, to make sure that you realize this is the time to raise any possible issues that you wish to raise.

THE WITNESS: I think the issues have been raised in the petition. I did raise issues that have not been brought up here today, in terms of the Judge's charge to the jury, and there was some question about whether or not they had been exhausted in terms of the state remedy, and I am certainly not an expert on that, as to whether they had or not. I felt that, because the State Supreme Court had, at some point, responded to them and said they could no longer consider them and whatever, that I had absolved my responsibilities in that regard. But, at any rate, I still believe that those issues—whether or not they could be considered by this Court individually—gives a very good picture of the instructions and the trial, as such, and I felt that those errors, even though they may not be considered individually, paint the picture of a very unfair and prejudiced jury already predestined to convict me, but I don't think that charge to the jury by the Judge helped [148] at all. In fact, it was very hostile.

THE COURT: Is there anything else?

THE WITNESS: I can think of nothing further.

THE COURT: Mr. Bell, anything for the Commonwealth?

MR. BELL: Nothing further from the Commonwealth.

THE COURT: Mr. Schumacher, anything further?

MR. SCHUMACHER: No, sir.

THE COURT: Mr. Bell, will there be any testimony from the defense?

MR. BELL: Your Honor, at this time, there will be no testimony on behalf of the Respondent. I would ask that the record remain open, such as we have had testimony here today of several occurrences the Petitioner has indicated were not on the record. I have not had occasion to speak to Judge Cherry or Mr. Reilly, who was then District Attorney, as to that. Perhaps that can be handled through an affidavit. Perhaps, after I discuss it with them, I can call Mr. Schumacher and make arrangements for some affidavits or whatever.

THE COURT: All right. Unless you feel there is some need to have testimony presented, we will consider the testimony closed.

Do you wish to argue the matter now, or would [149] you prefer to do that in briefs?

MR. SCHUMACHER: I would prefer to file a brief, Your Honor. I have to digest all the complex material that was just testified to today.

MR. BELL: Your Honor, I would be happy to do it by brief. I have filed a brief today with regard to some of the issues, the exhausted requirements, etc. I would present a copy of that. I would reserve the right to respond to the Public Defender's brief.

THE COURT: Mr. Schumacher, about how long would you need for your brief?

MR. SCHUMACHER: Because of pending case commitments, Your Honor, I would feel that it would be difficult for me to file my brief prior to the end of the year.

THE COURT: Mr. Yount, do you have any objection?

THE WITNESS: Are you saying it would be—

MR. SCHUMACHER: By January 1.

THE WITNESS: I have no objection.

THE COURT: All right. So we will have the Plaintiff's by January 1. Mr. Bell, how long do you need to respond to it?

MR. BELL: If I could have a month, Your Honor, by February 1.

[150] THE COURT: Okay. Now, Mr. Schumacher, if you wish to file any further response to the Defendant's brief, I say, do so promptly. I hope to start working on it now, and then I will use your brief as a guidance, because I fear, if I wait until the briefs are filed, it will take me two or three months to go through the record, and I would rather have an outline in mind at my leisure, rather than race through the thing at the last minute. I would sooner dispose of it, because, by the time the Respondent's brief is filed, the case will be a year old.

MR. SCHUMACHER: The one case that Mr. Thieman and I have been talking about recently—if that doesn't go to trial, I will have this prepared immediately. I have filed an answer to your comment, and I will file it now, and I will give the Court one.



THE COURT: Mr. Schumacher, we will expect your brief by January 1. If you can get it in sooner, fine. And we will expect the Commonwealth to respond within 30 days of Mr. Schumacher's brief, no later than February 1. However, if Mr. Schumacher's brief comes in at a time that you are tied up in trial, let me know. If you need more than 30 days, we will grant that, but February 1 will be the outside limitation.

MR. BELL: Very well.

THE COURT: Is there anything else that should [151] be taken care of here, at this time?

MR. SCHUMACHER: No, sir.

THE COURT: Anything for the Commonwealth?

MR. BELL: Nothing, Your Honor.

THE COURT: On just one other matter, Mr. Schumacher, you will attempt to get the Supreme Court briefs on at least the second appeal and, if possible, the first appeal?

MR. SCHUMACHER: Yes, Your Honor.

THE COURT: All right, then. We will recess.

(The entitled matter was adjourned.)

---

Reporter's Certificate

I, Theodore W. Thomas, do hereby certify the foregoing to be a true and correct transcript of proceedings held in the entitled matter at the time and place noted in the heading hereof.

(s) Theodore W. Thomas  
Theodore W. Thomas  
Official Reporter

EXHIBIT P-1-a

---

THE COURIER-EXPRESS

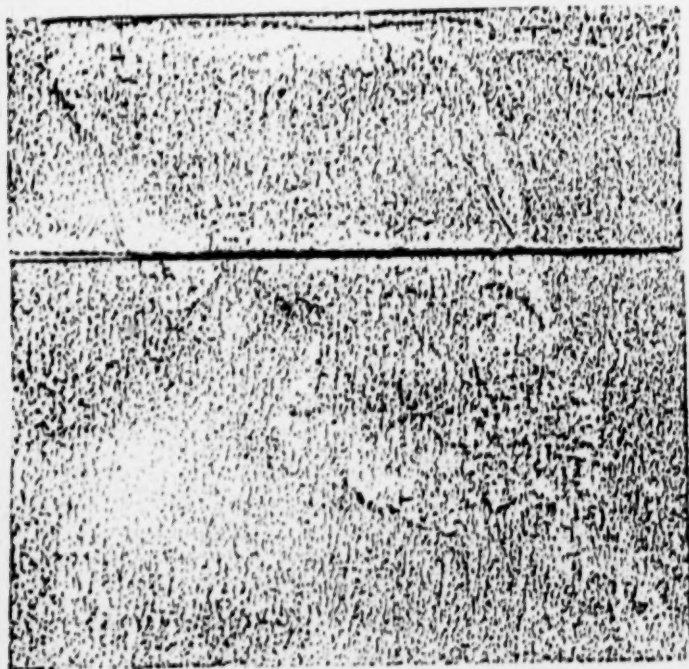
Vol. 87-No. 101 Serving Clearfield, Elk and Jefferson  
Counties DuBois, PA., 15801, Friday, April 29, 1966  
Dial 371-4200 Pages

**MATH TEACHER HELD FOR BRUTAL SLAYING  
OF LUTHERSBURG GIRL**



**LEAVING ARRAIGNMENT** at 10:15 this morning from the Alderman Merritt I. Edner's office is the

suspect in the Luthersburg murder case, Jon E. Yount (center). He is flanked at left by Detective Kenneth Bundy of DuBois, and Detective Ed Kerr, of Punxsutawney, at right (C-E photos by Joe Shields).



**BODY IN THE WOODS.** The body of Pamela Sue Rimer is shown in the woodlands, where it was found late yesterday afternoon.

### **JON YOUNT, 28, GIVES SELF TO POLICE**

By George Waylonis, Managing Editor

DuBois state police this morning charged a young married teacher of mathematics at DuBois Area Senior high school with the savage slaying of an 18-year old honor student yesterday.

Jon E. Yount, 28, of DuBois RD (Gelnet Section) was arraigned before Alderman Merritt I. Edner at 10 a.m.—Five minutes later he was remanded to the Clearfield County jail pending a formal hearing here Monday at 4 p.m.

Yount turned himself in at the state police substation here this morning at 5:45 after a score of troopers scoured woodlands all night for clues; & a three-state alarm was out for a green or blue station wagon with a chrome luggage rack on top. Police declined to say what Yount told them.

State police said the girl had been stabbed many times in the head and neck, and a stocking was wrapped around her neck.

An information of "murder and rape" was filed against Yount at the preliminary arraignment, by Trooper Donald Medford. Yount said nothing at his arraignment. The suspect, a native of Sandy twp., was termed by many of his students as a brilliant mathematics teacher.

In the second hideous slaying in this area in five years, the body of Pamela Sue Rimer, 18-year-old daughter of Mr. and Mrs. Douglas B. Rimer, of Luthersburg RD, was discovered crumpled in a sparse thicket a short distance from her humble homestead in Brady twp.

Less than an hour before she had alighted from a school bus and began her mile trek up a desolate dirt road to her home. She never made it.

Instead, police theorized, she entered or was forcibly dragged into the automobile which was sought,

and an attempt made to criminally assault her. Farm reared, and a strong girl, indications were she fought fiercely.

Mute testimony to her struggle was the trail ... the lonely road, which prompted her father to telephone state police in DuBois that his daughter was missing, and that he feared foul play.

Friends in DuBois, (Oklahoma), too, had been telephoned earlier. Their concern rushed them to the scene and they discovered the body minutes before the victim's parents and a trooper from DuBois, Raymond Fratangelo, came upon the scene.

It is a lonely and desolate country road. Traffic is extremely light. And, because of this, neighbors said they had noticed a blue, or green, or blueish-green station-wagon, with a chrome baggage rack on top, drive into the lane at an average speed, but departed a short time later at an excessive rate of speed.

This is the reason police were seeking the driver of this automobile—a Ford Falcon or a Nash-Rambler.

This is the only clue police said they had.

For Pamela Sue Rimer was a home-girl, who studied assiduously (she carried an extra heavy school schedule), who loved to tend her black & white horse Stormy; who had no steady boyfriends and who was wrapped up in 4-H Club projects and chemistry, a favorite subject in school.

An hour after the discovery, her mother, who is employed by the Cameron Manufacturing Co., in Reynoldsville, was under a physician's care. "Why did it happen," she cried to those around her.

For Pamela Sue was the last of her two children. Her other also died a violent death. Her son Douglas, was killed April 1, three years ago when he was pinned against a barn by a tractor in a farm accident. He was only 10, Pamela Sue was known as "Bunny" to her many friends at DuBois Area Senior High School. She was a senior and was looking ahead to college this Fall.

A pretty brunette, she filled her school days with study, and band music, and her farm activities.

Her home was in the pastoral rolling countryside of the Luthersburg-Troutville area, away from main highways. But she met her violent death as she walked the mile from the school bus stop. Her body was discovered a short distance from the dirt roadway. She, apparently, was carried to the spot by her assailant. Her humble, weather-beaten homestead was not too far away.

The discovery of the body was made shortly after 5 p.m.

When her daughter did not return home from school at her usual hour, Mrs. Rimer telephoned Earl R. Zartman residence in DuBois RD 3 (Oklahoma) to inquire if her daughter had band practice at the high school; or if she was visiting the Zartmans. Mr. Zartman is employed at Jeffers Electronics plant. The Zartmans and Rimers have been close friends for many years.

Concerned about the disappearance, Mr. Zartman and his wife, Elvira, and their 18-year-old daughter, Lona, long-time schoolmate of the victim started driving to the Rimer home.

A short time later, the father, who was searching the area, came across his daughter's school-books, and saw bloodstains. State police were summoned and a patrol car was dispatched to the scene.

The Zartmans were driving up the dirt-road to the Rimer home when Mrs. Zartman noticed "something blue" on top of the hill. She and her daughter investigated and found the body.

A state trooper, having arrived in the area, was only a short distance away and he was immediately summoned to the body.

His quick call to the sub-station in DuBois immediately set state police units into action. Detectives and troopers from Punxsutawney and DuBois went to the scene immediately. The area was blocked off so that it could be combed for clues.

A slight drizzle and overcast skies, brought darkness earlier than usual. Rains during the past two days made the dirt road soggy. Police were able to trace an auto which had turned around in the general area of the scene. Numerous plaster of paris casts were made of tire prints.

When the body was found, her coat was torn on the back, her blouse blood-stained from the wound in her throat, and a stocking knotted around her throat. One of her sneakers was off her foot, lying nearby.

An intelligent girl, Pamela was taking the academic courses at the high school, taking ... courses in several subjects, and taking more subjects than required. She had already been accepted as a freshman at Pennsylvania State University this Fall.



526a

*Exhibit P-1-a*

An excellent musician, she had first chair in the clarinet section of the school band.

And she also liked farm-life

See SLAYING, Page 2



LONA ZARTMAN

...Of DuBois RD (Oklahoma), a school-chum and personal friend. She was there when the body was found.

THE VICTIM....



Pamela Sue Rimer

528a

*Exhibit P-1-a*

THE SUSPECT....



Jon E. Yount

EXHIBIT P-1-b

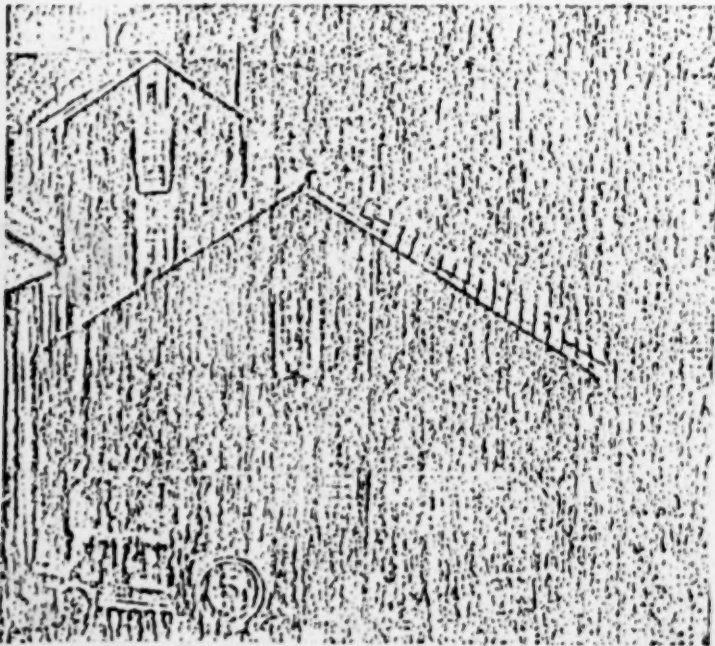
---

THE COURIER-EXPRESS

Vol. 87-No. 102 Serving Clearfield, Elk and Jefferson  
Counties DuBois, PA., 15801, Saturday, April 30,  
1966 Dial 371-4200

Rimers Were Building a New Home:

RIMER MURDER WEAPONS IN POLICE POSSES-  
SION





BASE OF THE TREES shown above is where the body of Pamela Sue Rimer was found [yester]day evening. The school bus in the background shows the short distance from the road- Other photos page 2).

WAS THIS THE LAST VIEW Pamela Sue Rimer had of her home. This photo was taken from point where police believe she was accosted. The photo shows the barn and the farmhouse at left. The photo was taken from a point on a slight rise in the road near the point the body was discovered. (C-E photos by Shields).

The Douglas Rimers of Luthersburg RD had been busy in recent months constructing a new residence.

He was a general mechanic for the Elmer Halstrom Construction Co., in DuBois, so he knew how to do most of the work himself.

The frame of the new home was up.

Included in this new home was a large bedroom. It was for their daughter, Pamela Sue, age 18.

The furnishes for this big bedroom were already selected. But, on Monday state police will present evidence at a public hearing, at which time they will ask that Jon E. Yount, a math teacher at DuBois high school be formally charged with the murder of Pamela Sue.

Her blood-stained body, pockmocked with numerous stab wounds about the face and neck, was found early Thursday evening a short-distance from her home.

At 5:50 a.m. Friday, Jon Yount, termed as a brilliant mathematics teacher by many of his students, walked into the DuBois state police sub-station and calmly said: "I think I'm the man you're looking for."

Sergeant Harry Ellenberger, in charge of the local sub-station, said today that two weapons, believed to

have been used in the murder, are now in their possession. They are a small knife and a wrench.

The blood-stained clothing of the victim and clothing from Yount are also in police possession.

Only a few details of the autopsy have been revealed by the authorities.

They said the 18-year-old honor student at DHS died of injuries by the many wounds of the neck and head and shock.

The girl was criminally assaulted, the authorities said.

It is believed that Yount will be committed to the Warren State Hospital for a 90-day period, during which time doctors there will conduct various mental tests. This has been a normal procedure in recent homicides in this county.

According to reports, Yount had been in the vicinity of the Rimer home many times, looking over possible land he was interested in purchasing.

Presently he owns a ranch-type home between Gelnet and Sabula. There is a large pond on the property, well-stocked with fish. He had lived there with

See RIMER, Page 2

#### RIMER

his wife, the former Ruth Kelgren, 25 formerly of Emerickville, and their two children Jon, 3 and Karen, age 1. It was reported that this home was up for sale because Yount was considering accepting a four-year scholarship at the University of Montana.



Yesterday, Yount was reported as saying "I don't know what happened." When he met his parents, Elveen and Caroline Yount; after his surrender, he apologized to his parents for the embarrassment and hardships he had caused his family.

#### Member of Class

Miss Rimer was a member of Mr. Yount's advanced math class, the only girl among a group of eight boys. It had previously been reported to the Courier-Express by school authorities that Miss Rimer was not in any of the classes taught by Mr. Yount. According to a source of school information Miss Rimer had discussed school problems with her math teacher as the regular session ended.

The DuBois Area High School was stunned Friday morning first by the brutal slaying of the popular young girl—a member of the school band and honor student—and then by the announcement that Mr. Yount, re-

---

#### EXHIBIT P-1-d

---

#### THE COURIER-EXPRESS

[Vol. 87]-No. 104 Serving Clearfield, Elk and Jefferson  
Counties DuBois, PA., 15801, Tuesday, May 3, 1966  
Dial 371-4200 16 Pages

[P]OLICE READ YOUNT STATEMENT AT HEAR-  
ING

THOSE LEFT BEHIND



PAM'S PARENTS, Mr. and Mrs. Douglas Rimer are shown above during the burial services for their daughter.

## HUNDREDS ATTEND BURIAL; MILITARY RIGHT FOR GRALLA

Full military rites were accorded to the late Pvt. Paul M. Gralla here yesterday.

He was the son of Mrs. Adeline Gralla, of Lord St., who perished in the crash of an airliner near Ardmore, Okla., on April 22.

And ironically, his burial was on "Loyalty Day—Youth Day" in DuBois—when high school seniors learn at first-hand the operations of the democratic form of government.

And on the same day, as Pamela Sue Rimer was, too, to be buried.

For Pvt. Paul Gralla, too, had been a member of the Class of 1966 until he enlisted in the army last November.

He did so because he was following a tradition in the Gralla family. His three brothers all were in the military service.

Conducting the special military rights during the funeral service at the St. Catherine's church and cemetery was a unit of 13 military men.

Of this, a reserve unit from the University of Indiana of Pennsylvania conducted the rites. Captain Herrmann, of that school acted as the coordinator between the military and the bereaved family.



**FUNERAL PROCESSION** extends several blocks on S. Main St., and overflows on "off-streets" for the Rimer services yesterday.

By **GEORGE WAYLONIS**  
Managing Editor

Eight cherub-faced young men carried a white coffin from the Woods Funeral Home yesterday afternoon.

This was an elite group—the remaining members of the Advanced Mathematics class at DuBois Area Senior high school.

They were the male students of that special class.

And they were carrying the body of Pamela Sue Rimer to her final resting place—in the Lakelawn Memorial Park, in Reynoldsville.

She, too, had been a member of that elite group—the only girl student in that special class. But her life was snuffed out violently late last Thursday afternoon as she walked alone down a desolate country road, alone, her school books under her arm,

her homestead was practically in sight when she was accosted. And she was criminally assaulted and bludgeoned to death by a heavy object and stabbed numerous times in the neck by a small knife.

— 0 —

HER DEATH CAME Thursday under lead-colored skies and in a slight drizzle. She was there alone with her attacker.

Her burial yesterday was under a bright sun and crisp air. And before several hundred persons.

As the funeral service was conducted for her on the other end of DuBois, across town on the East Side another member of that elite group was ...

This was Jon E. Yount, the teacher of this special Advanced Mathematics class.

Handcuffed, he sat taciturn in the packed hearing room of Alderman Merritt I. Edner, 501 N. Fourth St.

He looked calm but decidedly dejected as he listened to the minor judiciary read the two charges against him—rape and murder—as filed by Trooper Donald Medford, the official prosecutor for the State Police.

And when asked his plea he quietly said "Not Guilty."

It was then District Attorney John Reilly, called the first of three witnesses.

And after the three were heard, Alderman Edner declared that Jon E. Yount be held on charges of rape and murder until the next term of Clearfield County criminal court.

THE HEARING WAS over within 15 minutes, and the suspect was returned to the county jail, where he has been held since around noon last Friday, after his preliminary arraignment Friday morning.

Earlier that Friday, he had walked into the state police sub-station at West Liberty and calmly told officers "I think I'm the man you're looking for."

That was at 5:45 a.m. Within two hours, he had given the police a statement. This was read by Trooper Medford at the hearing yesterday.

This was the first public disclosure that Yount had given a statement to the police.

In the statement, as read into the record of the public hearing. Yount had related that he had left school at about 3:45 p.m., and had gone directly to the B. F. Goodrich plant where his wife is employed as a bailwinder.

IT WAS HIS INTENTION, he told police—to obtain money from his wife with which to purchase parts for their foreign compact auto. When his wife did not have sufficient cash, he decided instead to drive to the Luthersburg-Troutville area and examine some properties for sale.

Not finding any lands he was interested in, he drove out the road leading to the Rimer home.

He stated he then saw Pamela Sue Rimer walking the lane toward her home. He stated he recognized her and stopped and inquired if she knew of any land for sale in the area. According to Yount, Pam replied there "were a couple for sale around here."

Yount stated then he asked her if she needed a ride home and if she could show or de-

See HEARING Page 2

### HEARING

scribe the land to him. According to Yount, Pam climbed into the front seat, beside him.

Continuing his statement Yount said he continued speaking about properties for sale. He described her as being friendly and so he said he asked her if she would like to go for a ride.

At this point, Yount, in the statement said: "She got upset and said she would not and that the proper people should be told about me. I had never done this sort of thing before with my students and I'll never know why I did this time."

At this time, the statement continued, the girl began to leave the car and he attempted to bring her back into the auto by lugging at the back of her coat, "but she fought."

HE THEN TOLD of picking up a wrench on the floor of the car and swinging it at her several times. He told of her running from the auto. He said he



chased after her, pulling her down and attempting to talk to her.

He said she would not listen.

In ending his statement, he told of remembering his running back to his auto, noticing the wrench on the ground, picking it up, along with his hat. He stated he threw the wrench out of the auto on his way home.

"I dazedly walked around not really believing what had happened," his statement read. He told of removing his clothing burning some of the items and hiding the remainder. He then drove to the home of his babysitter and picked up his two children and returned home.

"I DID NOT KNOW for sure that I wasn't dreaming all of this until my wife told me what she had heard on the news," his statement read. "I tried to sleep but could not so I went to the state police station at 5 a.m. and told them what had happened."

Yount was represented at the hearing by his attorneys, David Blakley, of DuBois, and David Ammerman, of Curwensville. They presented no witnesses in his behalf.

The other witnesses were Trooper Raymond Fratangelo, who told of being detailed to the area when a call came that Miss Rimer was missing and foul play was feared. He said the grandmother identified the victim as being Miss Rimer.

DETECTIVE KENNETH BUNDY was the other witness. He told of witnessing the autopsy performed at the Maple Avenue Hospital, and the pathologist stating that a liaison had been committed.

None of the testimony was objected to by the defense attorneys.

The hearing scene was moved up to 2:30 p.m. instead of 4 p.m. as originally announced. Only three newspaper and one radio station representatives were in the hearing room with state police personnel.

WITH DISTRICT ATTORNEY Reilly was his assistant, Irv Fennell, of DuBois.

Non-police persons were frisked before being permitted to enter the hearing room.

None of Yount's family was present during the hearing. His....

BUT ACROSS TOWN—on Main St.—traffic was jammed as approximately 100 autos lined the Street, and the off-streets joined the funeral procession to the Reynoldsville cemetery. The procession was joined with about another 50 autos at the cemetery, mostly students from DuBois Area senior high school. Observers said it was probably the largest procession in contemporary times.

It is expected that District Attorney Reilly today will petition the court to have Yount taken to the Warren State Hospital for 90-days of psychiatric testing. This has been customary in recent homicide cases in Clearfield county.

## EXHIBIT P-1-f

NO. 1 MONDAY—SEPT. 19th

THE COURIER-EXPRESS

Vol. 07-No. 220 Serving Clearfield, Elk and Jefferson  
Counties DuBois, PA., 15801, Monday, September 19,  
1966 Dial 371-4200 16 Pages

## YOUNT TRIAL GOES ON

CLEARFIELD—A defense request that the start of the Jon E. Yount murder case be delayed at least two weeks in order to permit the completion of medical reports and the subsiding of publicity given the case has been denied by Clearfield County Judge John A. Cherry.

The trial in which the 28-year-old DuBois school teacher is charged with the slaying of 18-year-old Pamela Sue Rimer of Luthersburg R.D., will begin as scheduled at 9 a.m. Monday, Sept. 26.

The delay in the case was requested by Defense Attorney David E. Blakley at a required pre-trial conference last Wednesday. The conference in which rules for trial of the case were set up, was moved from open court to the judge's chambers at the request of the defendant and his attorney.

Mr. Blakley referred at that time to the wide publicity given in the Clearfield County press, but he mentioned particularly a story in a New York newspaper.

He labeled the story "defamatory and prejudicial to the right to a fair trial" and asked that the trial be

postponed at least two weeks to help this publicity to subside.

Mr. Blakley said he was not asking for a change of venue since the newspaper is widely circulated throughout Eastern United States and the defense felt a change of venue would accomplish nothing.

In answer to Mr. Blakley's request, District Attorney John K. Reilly said the New York paper was not widely read

See YOUNT, Page 2

#### YOUNT

throughout the county and he doubted if many persons were even aware of the story.

In arguing for the start of the case on Sept. 26, the district attorney noted that the defense has had since April 28 to prepare its case and complete medical reports to be presented at the trial.

He also said further problems would be caused by any delay since more than 200 persons have been told to report Sept. 26 for jury duty.

Judge Cherry, in refusing the request for the delay for the trial, said he felt publicity given the murder has not injured the defendant's case.

At the same time he announced general rules for the trial which will be in effect to assure the defendant a fair trial and to preserve the dignity of the court.

These rules will also affect the general public since they will limit the number of spectators permit-

ted in the courtroom and the public use of sections of the courthouse leading to the courts.

The number of spectators permitted in the courtroom will be limited to the seating capacity.

No one will be permitted to stand and no extra chairs or benches will be brought in.

The public will be permitted only in the courtroom and at recess will not be allowed to gather in the area at the rear of the courtroom where the law library and the judge's chambers are located.

The only persons who will be permitted to use the back stairs leading from the side entrance to the courthouse will be the defendant, the attorneys and witnesses in the case and attorneys having business with the court.

Admittance to the law library will be restricted to attorneys.

Deputy sheriffs will be posted throughout the courthouse to assure that the court rules are adhered to throughout the trial.

---

EXHIBIT P-1-g

---

No. II MONDAY—SEPT. 26

THE COURIER-EXPRESS

87-No. 226 Serving Clearfield, Elk and Jefferson  
Counties DuBois, PA., 15801, Monday, September 26,  
1966 Dial 371-4200 10 Pages

[Y]OUNT DEFENSE BOLSTERED; PICKING  
JURORS TO...

SELECTIONS BEING MADE FROM 252; CALL 100  
EXTRAS

Opposing lawyers began the selection of jurors this morning. By noon today three jurors had been selected. The selection will continue this afternoon.

Selected this morning were: Ann P. Hillman, State St., Curwensville; Dorsey Neeper, laborer, RD Curwensville; and Mac Weaver, Businessman, 714 Maple Ave., DuBois.

Homer King, well known criminal attorney of Pittsburgh has joined the defense staff of David Blakley, of DuBois, and David S. Ammerman, of Clearfield. Mr. King appeared before Judge John Cherry Friday and was admitted to practice in Clearfield County court.

There are comparatively few DuBois persons selected for possible jury duty in the murder-rape trial of Jon E. Yount, DuBois RD 2, that gets underway today.

Selection of the jury was started this morning at 9.

Of the 252 persons on the list only 40 persons are from DuBois. Of this number, 26 are on the normal list called for criminal court. The other 14 are among the 100 additional names drawn for petit jury in case the original drawn list is exhausted before a jury is selected. It is recalled that lists were exhausted before the Aljoe trial.

According to the scheduling from the district attorney's office, the Yount trial will occupy this entire week. A total of 23 other cases have been scheduled beginning next Monday, Oct. 3.

Those selected for possible jury duty this week include:

Rebecca L. Ammerman, RD, Houtzdale; Doris J. Andrulonis, h.w., RD 1, DuBois; Madeline Askey, h.w., Grassflat; Grace I. Badger, h.w., RD 1, Falls Creek; Eugene Bagerstock, Accountant, DuBois; Frank J. Bagrosky, laborer, Osceola Mills; Catherine Bailey, Clerk YMCA, Clearfield; Ralph R. Baney, laborer, R.D. 2, Clearfield; Sam J. Barba, laborer, Clearfield; Twila G. Barone, h.w., Clearfield; Jean E. Barton, Teacher, Clearfield; Cora E. Beard, h.w., RD 1, Clearfield; Mrs. Jack Bergh, h.w., Smoke Run; Alta Blankley, h.w., Curwensville; Mrs. Lucille Bone, h.w., Mahaffey; Orma L. Bortot, laborer, Clearfield; Helen Boyce, h.w., R.D. Westover; James Bray, laborer, New Millport; Jean Brocail, h.w., Osceola Mills; Lucille A. Breece, h.w., Morrisdale; John H. Brown, Retired, R.D. 3, Clearfield.

William G. Brown, Jr., Salesman, DuBois; Mrs. Allen G. Butler, h.w., Lanse; Clara Shope Carr, h.w., Clearfield; Arlene Cathcart, h.w., Wallacetown; Charles E. Conklin, Retired, Grassflat; Foster Coulter, laborer, R.D., Morrisdale; Hazel Cowdrick, h.w., Clearfield; Sherman T. Cowdrick, II, Business Man, R.D. 3 Clearfield; John J. Daughenbaugh, laborer, Osceola Mills; Lenore Davidson, h.w., Curwensville; LeRoy Deasey, laborer, R.D. 2, DuBois; William J. Delaney, Clerk, DuBois; Paul V. Dixon, laborer,



Clearfield; Urey Dixon, Farmer, R.D., Woodland; Marjorie E. Dobson, h.w., Phillipsburg; Matthew V. Duke, Retired, Madera; Mrs. Luejeane Dunlap, h.w., R.D., Philipsburg.

Romaine Ellenberger, h.w., DuBois; David H. Evans, Retired, Clearfield; Mae Evans, h.w., Glen Richey; Alta R. Ferguson, h.w., Clearfield; Margaret Fetcenko, h.w., R.D., Philipsburg; Lois Fishel, h.w., Irvona; Floyd M. Frantz, laborer, Troutville; Catherine Frock, h.w., Westover; Paul A. Fulton, laborer, Cherry Tree.

Rose A. Getz, h.w., Clearfield; LaVaughn Glosser, h.w., R.D. West Decatur; Helen Gregg, h.w., Irvona; Isabelle E. Hartley, h.w., R.D., Morrisdale; Walter Hazelton, laborer, R.D., LaJose; Gearhart Hensel, Retired, Winburne; William R. Hoover, Ins. Agent, Clearfield; John F. Hughes, Jr., Sales Manager, DuBois; June Hughes, h.w., R.D. 1, Westover; Andrew Lytle Johnson, Retired, Clearfield; Zoe M. Jordon, h.w., Clearfield; Elmer N. Jury, Retired, Curwensville; M. C. Kanarr, Retired, Irvona; James R. Kaacuff, laborer, West Decatur.

Elmer Kellerman, Wire Chief, DuBois; Vanetta L. Kennedy, Factory Worker, R.D. 1, Osceola Mills; Ralph Kephart, laborer, Osceola Mills; Arthur A. Ketchen, laborer, Westover; Anna E. Knepp, h.w., R.D. Olanta; Merland Knepp, Retired, Wallacetown; George Korinchak, Retired, Coal-

## YOUNT CASE

port; Joseph Kosiba, Spring Fitter, DuBois; Mary L. Kost, h.w., Ramey; Mrs. Florence Kowalski, h.w., Clearfield.

Helen J. Krach, h.w., DuBois; Grace Lansberry, h.w., R.D., Woodland; Joseph P. Leyo, Merchant, Coalport; Edith Lindstrom, h.w., Clearfield; Mrs. Minnie H. Lippert, h.w., R.D. 2, Clearfield; Jeanne Llewellyn, h.w., Penfield; Mary Lorigan, h.w., Osceola Mills; Leroy S. Lowder, laborer, Wallaceton; Jean L. Lucas, h.w., R.D., Irvona; Paul Lucas, laborer, Smoke Run; Sheridan D. Luzier, Office Worker, R.D. 2, Clearfield.

Janet Lytle, h.w., Clearfield; Dana I. McGarvey, Farmer, R.D., Berwindale; Ella Mae McGarvey, h.w., Clearfield; Raymond McHenry, laborer, Houtzdale; Louis McMillan, Retired, R.D., Grampian; Ruth McQuillen, h.w., Wallaceton; Maxine Maines, h.w., R.D. 2, Clearfield; Anna Marando, h.w., DuBois; Shirlene Markle, h.w., Westover; Fred T. Mazimiec, Pipe Fitter, DuBois; Ernest Mitchell, laborer, Woodland; Rocco Madafer, carman, DuBois; Nicholas E. Mondock, laborer, Morrisdale.

Clara Moore, h.w., Clearfield; Janette M. Moore, Reg. Nurse, Clearfield; Gertrude J. Myers, h.w., Clearfield; Dorsey Neeper, laborer, R.D., Curwensville; Mary E. O'Dell, h.w., Manson; Rose Marie O'Neill, h.w., Osceola Mills.

Nick F. Paglia, Salesman, DuBois; John Pallo, Retired, Hat Run; Kenneth D. Pearce, laborer, Burnside; Guiseppe Pellen, Retired, Clearfield; Mrs. Margaret F. Pitrovich, h.w., Ramey; Mike Pollock,

Carpenter, Osceola Mills; Julia K. Potts, h.w., Clearfield; Joseph Prontock, Office Worker, DuBois; Mrs. Mary Records, h.w., Clearfield; Margaret Rasavage, h.w., DuBois; Burley Rowles, Merchant, Curwensville; Peter D. Saggese, Rest Worker, Hawk Run; Mrs. Faye Sahm, h.w., Burnside; Jo Ann Sankey, h.w., Clearfield; Robert L. Scott, Mail Carrier, DuBois; Henry Serafini, laborer, DuBois; Lavone Shaffer, laborer, R.D. Grampian; Robert W. Shaw, Construction, West Decatur.

Marlin Shope, laborer, Utahville; Joseph G. Shugarts, laborer, R.D. 2, Clearfield; Marion Sidorick, h.w., Osceola Mills; George Sinfelt, Carrier P.O., DuBois; Leonard Smeal, Retired, Clearfield; Clark G. Smith, Ins. Agent, Curwensville; Eugene B. Spadaro, Bottler, DuBois; Arthur M. Stewart, Retired, Cherry Tree; James Stiver, Retired, LaJose; Frank Swidersky, Retired, R.D., Houtzdale; Norman L. Thomas, Retired, R.D. 1, Grampian; William R. Tinker, laborer, R.D. 2, DuBois; Marian A. Tomasik, Floor Woman, DuBois. William E. Town, Layout Man, DuBois; Margaret Urish, h.w., Osceola Mills; Larue D. Violanti, h.w., Woodland; Raymond Volpe, Retired, Curwensville; Joseph Washed, Retired, Beccaria; Earl Watson, Potter, DuBois; Floyd A. Welch, laborer, R.D. 2, Clearfield; Pauline Welker, h.w., R.D. Woodland; Dorothy E. Williams, Teacher, Clearfield; Edna F. Williams, h.w., Coalport; Roy D. Wilson, Lineman, Philipsburg; William S. Wilson, Retired, Glen Richey; Lulu E. Wood, h.w., Grampian; Frank I. Wyant, Carpenter, DuBois; Albert E. Yarger, laborer, R.D. 1, Houtzdale; D.A. Yingling, Retired, Clearfield; David E. Yocum, Business Man, Clearfield; John Zartman, Salesman, DuBois.

And if more potential jurors need be called, they will come from the following list:

Mrs. Betty Adams, h.w., Clearfield; Frank B. Alexander Jr., laborer, DuBois; Rosella Bachelier, h.w., Grampian; Robert I. Badman, Retired, Houtzdale; Carl Barquist, laborer, Grassflat; Wilbur Lawson Bloom, Retired, Grampian; Ray F. Bouch, laborer, Mahaffey; William A. Bruce, laborer, Mahaffey; Margaret O. Burt, Reg. Nurse, DuBois; Emma Curry, h.w., Clearfield; Homer Delattre Jr., laborer, Madera; Lawrence E. Dick, laborer, Coalport; Mary K. Divins, h.w., DuBois.

Phyllis DuBos, h.w., Westover; Anna F. Earley, h.w., Winburne; Joseph Evanochko, laborer, Madera; Clara Freeman, h.w., Coalport; Hilma L. Gailey, h.w., Run; Olive Mae Gilliland, h.w., Clearfield; Patrick Gorman, Tax Collector, Osceola Mills; Clair Graham, laborer, Woodland; Martha C. Hall, h.w., DuBois; Norman L. Hanson, B&O Carman, DuBois; Simson Hartshorne, Maint. Man, Philipsburg; Elmer M. Hepburn, laborer, Clearfield.

Hazel Hill, h.w., Grassflat; Ann P. Hillman, Retired, Curwensville; George A. Holt, Retired, Clearfield; Frederick P. Hoover, laborer, Curwensville; Sue M. Houser, h.w., Clearfield; Kathleen A. Hudson, h.w., Clearfield; Naomi Hurd, h.w., Mahaffey; Mary Husak, Factory Worker, Curwensville; Herbert T. Johnson, laborer, Munson; Robert J. Johnston, Barber, Coalport; Pete Kashella, laborer, Munson, Raymond Kephart, Retired, Brisbin.

Mrs. Robert Kester, h.w., Grampian; Albert N. Kitchen, laborer, LaJose; Ellis Kitchen, laborer,

Westover; George S. Kitko, laborer, Madera; Dorothy J. Kline, h.w., Clearfield; Lucy A. Kline, h.w., DuBois; Mrs. Dennis Knarr, h.w., Troutville; Francis H. Lane, Retired, DuBois; Alex Leshok, Clerk, DuBois; Mrs. Charles Lloyd, h.w., Smithmills; Frank M. Lope, laborer, Clearfield; Anna Rose Love, h.w., DuBois; Lois Lukens, h.w., Smoke Run.

James H. Luther, Painter, DuBois; Earl Luzler, Retired, Clearfield; Kathryn McCracken, h.w., Curwensville; Mary A. McDade, Nurse, Falls Creek; Charles H. McGinness, Welder, Clearfield; Louise McKee, h.w., Westover; William P. Maher, laborer, Osceola Mills; Earl H. Maines, laborer, Clearfield; Ellen Mailin, h.w., Houtzdale; Marjorie Marriott, h.w., Clearfield; Steve C. Matko, laborer, Coalport; John Mehallow, laborer, Hawk Run.

George Mendel Jr., Salesman, Hawk Run; Hazel Merritt, Secretary, Clearfield; Mary R. Miele, h.w., Curwensville; Naomi V. Miles, h.w., Utahville; James D. Park, laborer, Penfield; Richard C. Payton, laborer, Clearfield; Evelyn D. Pearson, h.w., Clearfield; Frank A. Pullman, laborer, DuBois; Cloyd H. Putt, laborer, Clearfield; Chester Rachocki, Equipment Operator, Coalport; Vivian Rainey, h.w., Mahaffey; Marain G. Reams, Telephone Operator, Philipsburg; Allen B. Roos, Farmer, Kylertown.

Nancy L. Rutkowski, h.w., DuBois; Viola May Schucker, Clerk, Clearfield; Lee J. Schultz, Retired, Winburne, George S. Shaffer, Retired, Ansonville, Hazel E. Shillane, h.w., Clearfield; William A. Shilenn, Retired, Clearfield; Marion E. Sims, h.w., Frochville; Merle Snyder, Farmer, Mahaffey; Evelyn G. Somerville, h.w., Westover.

John A. Sotak, Retired, Morrisdale; Helen Suplizio, h.w., DuBois; Della Taylor, h.w., Curwensville; Mary Trella, h.w., Brishin; Ernest F. Troxeil, Retired, Mahaffey; Harvey Troxeil, laborer, Utahville; Richard Valimont, laborer, LeContes Mills; Aloysius Valimont, laborer, Clearfield; Mrs. Ivan L. Walker, h.w., Houtzdale; Ruth Walker, h.w., Clearfield; Alex A. Ward, laborer, Clearfield; Mac Weaver, ..., DuBois; Mrs. Ennie L. Williams, h.w., Utahville; Margaret Wilsoncroft, h.w., Osceola Mills; Ernest Wise, Retired, Curwensville; Mrs. Stella Wood, h.w., Philipsburg.

---

EXHIBIT P-1-h

---

NO. III TUESDAY—SEPT. [27]

THE COURIER-EXPRESS

Vol. 87-No. 227 Serving Clearfield, Elk and Jefferson  
Counties DuBois, PA., 15801, Tuesday, September 27,  
1966

Dial 371-4200 23 [Pages]

NINE JURORS ARE SELECTED IN MURDER

Yount Leaves Courthouse *Remember old Sarge Gordon*



Shown above are two members of the state police, a deputy sheriff and Jon Yount handcuffed, as they left the Clearfield County Courthouse Monday afternoon at the end of the first day of the murder trial. Yount, former DuBois school teacher, is charged with the slaying of one of his students, Pat Sue Rimer, last April. Escorting the defendant back to the county jail are Troopers Kerr and Gorman, with Deputy Sarge Gordon in the doorway.



## Defense Attorneys Leave Court



Appearing above as they prepared to defend their client, Jon Yount, in Clearfield, are Attorneys Homer King of Pittsburgh and David Blakley, of DuBois. The trial was in its second day as the jury was in the process of being selected. *This is a terrible picture of Both-as-King had reddish crew-cut hair & is about 40.*

**JUDGE CHERRY IN EFFORT TO SPEED YOUNT PRELIMS.****Bulletin**

As court adjourned at noon today, one additional juror had been selected in the Jon Yount trial, bringing to a total of nine, the number chosen thus far. The ninth juror to be selected was Elmer Kellerman, Bell Telephone Co. wire chief, of DuBois.

At 11:30 this morning as the Jon Yount murder trial neared its noon recess in Clearfield County Court, two additional jurors had been selected, bringing to a total of eight the number selected since the session got underway Monday morning.

A total of 24 prospective jurors received challenges this morning and of this total only two were accepted for duty. They were, Mrs. Faye Sahn, a housewife and mother of three children; and Mrs. Vivian Rainey, also a housewife and mother of four children, of Mahaffey. Six additional jurors had been selected at Monday's session. It was hoped that the six additional jurors might be selected this afternoon, enabling the testimony to get underway Wednesday.

Judge John Cherry, in an effort to speed the preliminaries of the trial, asked a number of questions in the jury selection and urged that there be no undue delays.

Most of the jurors questioned were excused on the basis of their opposition to questioning on capital punishment—when they stated they were opposed to such a penalty, if the defendant should be found guilty.

The courtroom was well-filled with spectators, newsmen and county officials as the session got underway today.

A large number of persons was in the courtroom on Monday when the selection of the first jurors was made.

During Monday morning's session, three of 14 were selected and Monday afternoon 32 more were examined but only three chosen, totaling six for the day.

Picked Monday afternoon were Grace I. Badger, housewife of RD 1, Falls Creek, the 24th person called; Albert E. Yarger, a laborer from Houtzdale, the 21st person called; and Raymond Volpe, a retired worker, from Curwensville, the 16th person called.

Selected Monday morning were Mac Weaver, businessman, of DuBois; Dorsey Neeper, laborer, RD, Curwensville, and Ann P. Hillman, Curwensville.

On Monday, the sixth juror was selected at 2:10 p.m., and none was added after that. Court concluded for the day at 4:45 p.m.

See YOUNT'S TRIAL, Page 2

#### YOUNT TRIAL

These are the jurors who will decide the fate of the 28-year-old former DuBois Area Senior high school mathematics teacher charged with the murder and rape of Miss Pamela Sue Rimer, 18.

The body of Miss Rimer was found April 28 in a wooded section along a rural road where she walked from her school bus to her home at Luthersburg RD 2.

Police said the attractive high school senior had been stabbed many times and a stocking was wrapped around her neck.

The following morning the defendant appeared at the DuBois state police sub-station voluntarily and said: "I think I'm the man you're looking for."

EXHIBIT P-1-i

---

IV WEDNESDAY—SEPT. 28th

THE COURIER-EXPRESS

*Note headlines says Collapses—& as you read on it says NEAR-COLLAPSE & they say it was ... as she was completely composed in exactly 10 minutes to take the stand again—damn the papers!*

No. 228 Serving Clearfield, Elk and Jefferson Counties  
DuBois, PA., 15801, Wednesday, Sept. 28, 1966  
Dial 371-4200 40 Pages

[M]OTHER OF PAMELA SUE COLLAPSES ON  
STAND

TEMPORARY INSANITY MOVE BY DEFENSE?

By GEORGE WAYLONIS  
Managing Editor

The distinctions of legal quotients dominated the "prelude" to the Jon E. Yount murder trial in Clearfield yesterday. They were almost quodlibetic.

That prelude consisted of the 104 prospective jurors parading to the stand, and the lazy legal litany recited, first by defense, then by the commonwealth or vice versa.

For the Commonwealth, a jury was wanted that has the courage to impose the death penalty.

For the defense, a jury was wanted that believes that such a thing as temporary insanity exists.

Each side got what it wanted.

And the jury box filled slowly. And after nine had been selected, there was a large discarding of jurors. And after the box was filled, the wholesale discarding threatened again until Judge John A. Cherry called for a side-bar conference. After that, the first of the two alternates was quickly accepted. Five prospects later the last was accepted. The hour was 5:15 p.m. yesterday.

But both sides had appeared to be adamant in wanting jurors with strong convictions. And as the long legal litany was recited, both sides jabbed their point of view into the jurors already selected.

Surprisingly, one-fourth of the jury is composed of persons from DuBois, in which territory the brutal slaying occurred last April 28.

And this was supposedly the territory where passions and emotions were flaming because an attractive 18-year-old honor student at DuBois Area Joint high school was murdered and criminally assaulted. She had been beaten and stabbed many times. Her throat had been cut and a stocking was wrapped around her throat.

#### DuBois Steady

But it wasn't from the ranks of the 40 DuBois area persons that signs of emotion flowed. Instead, many of the prospective jurors from towns buried in Clearfield County's mountains displayed preconceived notions of guilt.

Today, a jury of six men and six women began hearing testimony that will seal the fate of the former mathematics teacher at DHS. The 12 and the alternates are:

Mac Weaver, businessman, 711 Maple Ave., DuBois.

Dorsey Neeper, laborer, RD Curwensville.

Ann P. Hillman, State St., Curwensville.

Raymond Volpe, retired, Curwensville.

Albert E. Yarger, laborer, RD 1, Houtzdale.

Grace I. Badger, housewife, DuBois, Falls Creek Rd., RD Falls Creek.

Faye Sahn, housewife, Burnside.

Vivian Rainey, housewife, Mahaffey.

Elmer Kellerman, 413 South Church St., Bell Telephone plant manager, DuBois.

Vanetta L. Kennedy, factory

Temporary

worker, RD 1, Osceola Mills.

Fred Nazimiec, [510] Pifer St., highway inspector, DuBois.

Marion E. Smith, practical nurse, housewife, RD, Frenchville.

Alternates are: Lucille Rose, housewife, Mahaffey; and Naomi V. Miles, housewife, RD Coalport, age 23 and the youngest of all the jurors.

Psychiatry and psychiatrists, apparently, will play a vital part in the defense. This 'new science' continually is being utilized in murder trials throughout the nation. And more and more "experts" in this field are being utilized as witnesses. Knowing the shape of things to come, the commonwealth attorneys quizzed

jurors as to their interest and their reading into the subject of psychiatry.

And the "new look" to the defense still remains an enigma, Homer King, a Pittsburgh attorney, recently joined the defense. He was admitted to practice in Clearfield County court only last week.

It is customary to ask potential jurors if they personally know any of the participating attorneys. And the commonwealth continually referred to "Mr. King ... from Pittsburgh."

And he is looked on as an import from the city, the first to appear in a criminal case in Clearfield County in many years. He is unlike the late Charles J. Margiotti, from DeLancey, Pa., who would take a homicide trial in Jefferson county court just to "visit home" once in a while.

#### Newcomer

An area daily newspaper described Mr. King as a friend of the Yount family; but the Courier-Express learned that Mr. King is a friend of a friend who is a friend of a friend of the Yount family. An upcoming criminal attorney in Pittsburgh, the Yount family was persuaded to have him join the team of David Blakley, of DuBois, and David Ammerman, of Curwensville, who have been serving as Yount's counsel since his arrest April 29.

District Attorney John K. Reilly, Jr., and his assistant Ervin S. Fennell, Jr., of DuBois, divided the chores of examining the prospective jurors; while Mr. King handled all the duties for the defense. Late



yesterday afternoon, Mr. King was joined by his law associate in Pittsburgh, Frank Sabino.

Jon E. Yount was immaculate in dress, dark suit with white shirt, and a new crewcut. He became animated only when his attorneys huddled to discuss a prospective juror's interest in psychiatry.

### Know Police?

Many jurors were questioned about any relationship or associa- ... [with] state troopers, whose organization will spearhead the prosecution. In fact, one of the prospects was challenged by the defense because he was friendly with two troopers in Clearfield, none associated with the case or trial, and whose names do not appear on the list of commonwealth witnesses which was given the defense by the District Attorney.

But a DuBois man, Fred Nazimiec, easily made the panel, and he wasn't queried concerning any police relationship (he has a brother who is a state trooper, stationed at Lawrence Park.)

DuBois area persons called to the stand but not accepted for the jury included: Doris J. Andrulonis, RD Luthersburg; Floyd Frantz, Troutville; Gearhart Hansel, Force; Joseph Prontock, Robinson St., DuBois; Frank Wyant, 221 W. Long Ave., DuBois; John Zartman, 509 E. DuBois Ave.; Frank B. Alexander, 115 E. Park Ave., DuBois; Martha C. Hall, 520 Maple Ave., DuBois; Francis H. Lane, 500 S. Highland St., DuBois; Alex Leshok, 213½ Rumbarger Ave., DuBois; Anna Rose Love, 407 E. Park Ave., DuBois; Helen Suplizio, 707 W. Weber Ave., DuBois.

James Park, of Penfield, was called but was AWOL. It was learned he had become ill and he was excused by defense and the prosecution, after his name had been pulled from the box by Prothonotary Archie Hill. The Judge concurred.

Judge Cherry apparently expects the trial to be completed this week because jurors excused from this case have been ordered to return for other cases on the criminal docket, scheduled to begin next Monday morning.

Strict rules are in effect in the courtroom. Newsmen are forbidden to leave the courtroom while the trial is in session. All picture-taking in the courthouse was also banned by Judge Cherry. He ordered the courtroom cleared Monday noon during the lunch recess, pointing out he did not want spectators bringing their lunches so they will not lose their seats in the 100-seat courtroom.

A bit of evidence, to be used in the case, was taken to Pittsburgh last night under state police guard. The nature of the evidence was not disclosed.

#### NO KIN

There were few spectators yesterday. Prospective jurors occupied much of the seating.

None of the Yount family was in the courtroom during the jury selection. The defendant's attractive sister met him at the doorway downstairs as he was being escorted back to the county jail. His parents were waiting for him at the jail. Tuesday is a visitor's day.

None of the jurors questioned told of reading national publications which featured the Yount-Rimer case in recent editions. The majority had only read local area publications. The defense had attempted to delay the trial until the interest in the "inflammatory" article in a New York publication had subsided. This request for a delay was denied by the judge last week. The article had contained inaccuracies which had been ... by persons associated with or near the investigation.

Ages of children and grandchildren came into prominence. This was asked of most jurors. After all, the age of the murder victim was 18.

---

Read the Courier-Express

UNABLE TO FACE YOUNT AS RECESS CALLED  
BY JUDGE

Mrs. Lavonne Rimer, mother of Pamela Sue Rimer, DuBois Area High School girl who was brutally slain near her Luthersburg home last April 28 as she was returning from school, became hysterical on the witness stand at Clearfield this morning and was in a state of near-collapse as she was assisted to a court-anteroom.

As her steps were directed past the defendant, Jon Yount, former DuBois High School teacher who is accused of the slaying, she cried "I can't go by him," and she was directed from the courtroom by a more circuitous route.

The court was thrown into pandemonium as Mrs. Rimer screamed in her agony as she was first ap-

proached by Attorney Homer King, a member of the legal staff defending Yount. She had previously been questioned by District Attorney John K. Reilly and it was while Mr. King approached the witness-stand that Mrs. Rimer cried out, partially collapsed and was led from the courtroom.

Protesting to State Police Detective Edward Kerr and Court Crier Louis Hudslek that she could not pass in front of the defendant, her steps were directed along another aisle.

Following the unexpected commotion, Judge John Cherry called a brief recess. — *10 minutes*

Mrs. Rimer appeared as the second witness this morning, following on the stand Corporal John Magas of the state police, who presented 22 photos taken at the scene of the crime in Brady township.

Mrs. Rimer was then called to the stand and questioned by Prosecuting Attorney Reilly as to the location of the Rimer home, and of her first concern over Pamela Sue's late return from school. The family first became fearful that something might have happened to their daughter when Mr. Rimer, after a brief search, found Pamela's books along the roadside. It was at that point that neighbors and police were notified, resulting in finding the 18 year old girl's body, beaten and slashed, a short distance from the roadside.

Jon Yount, one of her teachers at Senior High, spent the night at his home on the outskirts of DuBois and turned himself in to state police early the following morning.

He is charged with both murder and rape.

Local and visiting newsmen are not permitted to leave the courtroom at Clearfield except for short recess periods.

Mrs. Rimer's collapse on the stand occurred this morning shortly before 11:00.

Scheduled as the third witness of the morning was Mrs. John Poidya, grandmother of the slain girl.

Mrs. Rimer was to resume her appearance for questioning by defense attorneys before noon.

---

EXHIBIT P-1-j

---

NO. V THURSDAY—SEPT. 29th

THE COURIER-EXPRESS

[Vol.] 87-No. 229 Serving Clearfield, Elk and Jefferson  
Counites DuBois, PA., 15801, Thursday, September  
29, 1966

Dial 371-4200 24 Pages

[P]ATHOLOGIST CALLED IN RIMER MURDER  
TRI[AL]

*Unger withdrew all his statements later & he testified  
the girl was still a virgin but that a little Hanky Panky  
had taken place (no doubt with her boy...*

FRIENDS-NEIGHBORS DESCRIBE PAMELA SUE  
AS MODEL GIRL

By GEORGE WAYLONIS  
Managing Editor

Defense Attorney Homer King was quick to grab every opportunity to prove the social life of Pamela Sue Rimer, for whose murder Jon E. Yount is charged and today is standing trial in the Clearfield court.

Her life and habits had been impeccable, authorities had been told after her bludgeoned body was found on a hillside last April 28, near her home in Brady Twp.

And Mr. King got nowhere yesterday to show otherwise. Four witnesses he cross-examined upheld the image of Pamela as a girl whose life was devoted to home, studies, 4-H activity and the school band.

Only on Saturday nights, normally, he was told did Pamela Sue have a date—and usually to go to a square dance.

Mr. King had sought more about her social activities from her mother, from Mrs. Emma Zartman, and her daughter, Lona; and Jessica Marshall, of Luthersburg, a neighbor and the last person to see Pamela before she was accosted on the “red-dog” road that led to her farm home.

Before her emotional outburst that broke up the trial briefly Mrs. Rimer related that her daughter never dated during the week, that she was president of the 4-H Horse and Agriculture Club. She had read 15 books for her last term paper and often stayed up to read until 2 a.m., and that frequently she would play her clarinet. She said Pamela had been an honor student since First Grade.

In being cross-examined, Lona Zartman said she had been friends with Pamela for about six years. She

said she knew Pam's steady boyfriend, who lived on a farm near Sykesville and who went to another school. They would double-date occasionally, going to a movie in DuBois. They were together practically every weekend, and had birthday parties practically the same time. They were group parties, she said, and not only couples.

Miss Zartman had been in a physics and trig classes with Pam, and later the Advance Mathematics Course, which was taught by Yount. She and another girl dropped the Course, leaving Pam to be the only girl in the class. She dropped because she had expected to have another instructor other than Yount. She said he was "unreasonable with home work."

Jessica Marshall, 15, a 9th Grader last year, testified to leaving the bus with Pamela and walking a short distance to a "Y" in the road, where they parted, each heading home. In her cross-examining she said they were neighbors but never socialized.

Last Wednesday afternoon District Attorney John K. Reilly called two witnesses who had furnished police with information last April 28 of a blue or green station-wagon, a Rambler or Falcon make, with chrome rack on top, traveling slowly on the road leading to the township road which leads to the Rimer home; and then seeing it return about 20 minutes later at a higher rate of speed.

The two were Clyde Gontero and his 16-year-old son, Larry, of Luthersburg, RD.

They viewed the auto through the picture window of their home, which is located about 100 feet from the roadway. Larry said it had been the only



auto to pass his home in about 20-25 minutes. His father went further and stated the driver had a "darkish coat and white shirt" was in his early twenties or late teens. Mr. King objected to this but was overruled.

It was a short time later that Douglas Rimer appeared at their home and told them his daughter was missing. They joined him to make a search.

Details leading up to the finding of Pamela's body occupied the first day of testimony in the trial. All persons present when the body was discovered were called on to testify.

They include Earl Russell Zartman and his wife, Emma, of Oklahoma who told of two telephone calls from the Rimers telling of the disappearance of Pamela Sue. With their daughter, Lona, they headed to the

See FRIENDS, Page 2

Friends

area.

Enroute to the Rimer house, Mrs. Zartman "noticed something" in the woods. She and her daughter left the auto, and were the first to discover the body.

In her testimony, Lona said she recognized the blue skirt and sweater on the body. Mrs. Zartman testified that Pam was lying on her stomach, her coat up over her back and her panty girdle exposed.

After telling Mr. Zartman to summon an ambulance or police, Lona said she sought a pulse beat

but got none. She did not disturb the body she said. She noticed a "cut on the back of her head, like a half moon." One stocking and shoe were off. She said there were "lots of broken leaves around, like a path down the hill."

Photographs of the body were shown to the girl and she said this was the scene she had seen. These photos were among the 22 identified by Corporal John W. Magas, of Reynoldsville, who is Troop C photographer and identification specialist at Punxsutawney. He said the photos were ordered taken by Trooper Donald Medford of the DuBois sub-station, who is the prosecutor in the case against Yount.

Other photos of a station wagon were shown to the Gonteros. They both replied the auto they had seen the evening of April 28 was similar to the one shown in the photographs.

Also included were two color photographs taken by Robert Young, a DuBois photographer, on order from the state police.

Trooper Raymond Fratangelo, of the DuBois sub-station, told of receiving a call from the Rimers and arriving at the scene 10 minutes later and being met on the roadway by Clyde Gontero and Mr. Rimer. The Trooper told of Mr. Zartman coming to inform them of finding the body.

When he arrived at the body, the girl's grandmother, Mrs. Pauline Poida, of Helvetia, was leaning over the body and sobbing.

Leaving the Zartmans to keep others away, Trooper Fratangelo went to his patrol car and radioed for more troopers.

Six photographs, showing various aspects of the typography of the area, were identified by the Trooper and these were admitted into the record.

Mr. King attempted to withhold entry of the photos of the body from the record but was overruled. Judge Cherry declared they were an aid to the oral testimony.

A change was made during early afternoon in the jury. Juror Elmer Kellerman, of DuBois, one of the 12 was excused because of the death of his father-in-law. Two of Mr. Kellerman's children had been students of Yount. Another DuBoisite on the jury, Fred Nuziemic also had children taught by Yount. Mr. Kellerman was replaced in Seat No. 9 by the first alternate juror, Lucille Bone, housewife, from Mahaffey.

Mrs. Pauline Poida, the grandmother, appeared briefly on the stand to relate she had not disturbed the body. She only held Pam's hand, and kissed it, she said.

Also appearing briefly was Donald Marshall, of Luthersburg, driver of Bus No. 13 on which Pamela Sue was a passenger going home from classes. She had not traveled with him that morning to classes he testified. He told of the two girls leaving the bus between 4:15 - 4:20.

Clearfield County Coroner Ralph Geer, of Penfield, told of ordering the autopsy by Dr. John Unger, local pathologist, at the Maple Avenue Hospital; having the body removed to the Hospital by the Woods funeral home ambulance. He presented a copy of the

death certificate but it was not immediately entered into the record.

Testimony yesterday was completed shortly before 6 p.m. after Cp. Frank Bolick, of the DuBois substation, told of his obtaining items belonging to Pamela Sue which were found by her father along the "red dog" road. They were obtained at the Rimer residence. These included two textbooks, one on Government and the other Advance Mathematics, five cardboard covered notebooks, a wallet, a magazine, a pamphlet, a straw colored plastic handbag, an umbrella, neck piece (a black ... with a music insignia) a left hand glove, neckerchief and her social security card.

The courtroom was half-empty during the morning hours yesterday but teener girls filled the empty seats late in the afternoon.

Wednesday mornings' session opened with Mr. Reilly presenting Exhibit A, a map of that section of Brady twp. in which the investigation was conducted. He generalized the various details of the crime committed. Mr. King objected, saying he was "going too far." This was sustained.

It was then that the District Attorney announced that the Commonwealth was seeking a verdict of first degree to rape and murder.

In opening her testimony, Mrs. Rimer told of returning home from her job as a welder at the Cameron Manufacturing Co., Reynoldsville at 4:50, and her daughter was not there. It was then she made the first call to the Zartman's, and to Jessica Marshall. It was then her husband, Douglas, arrived home.

He had with him Pamela's schoolbooks and umbrella which he found along the road. After calling her mother, Mrs. Rimer said her husband telephoned the state police.

During her direct testimony Mrs. Rimer was nervous, and sobbed frequently. Her voice was weak and almost inaudible.

Mr. Reilly turned to Mr. King and offered the witness for cross-examination.

Mr. King walked toward Mrs. Rimer and was stunned when she rose from the witness chair and became hysterical. Her mother, (Mrs. Poida), rushed to her side, as did the Court Crier Louis Hudsik. Mrs. Rimer squirmed and screamed as she was led by the defense table where Yount was seated. State Police Detective Ed Kerr turned the trio around and shuttled them from the court room via the judge's chamber.

The jurors were immediately taken from the courtroom.

After the emergency recess Judge Cherry told the jurors to dispel from their mind what they had heard. After a side bar ... Cherry told the jurors to weigh first ...

When Mrs. Rimer returned to the witness stand, she maintained her composure. Mr. King asked his questions from a position near the defense table.

He asked whether Mrs. Rimer had visited Mrs. Yount's home in July 1966. *Yes she had.*

This developed another conference by the attorneys and judge. After it, Mrs. Rimer was dismissed

from the stand. No further clarification came, nor to the statement Mr. King had asked Mrs. Rimer if she had made.

The defendants' parents and sisters were in the courtroom. Douglas Rimer, father of the ...

#### REPORTS DETAILS OF DEATH

Dr. John Unger, pathologist at the DuBois and Maple Avenue Hospitals in DuBois, was scheduled to take the witness stand shortly before noon today, to describe the results of an autopsy performed on the body of Pamela Sue Rimer, 18 year old victim of last April's slaying near her home at Luthersburg. Jon Yount, former DuBois High School teacher is charged with the slaying, and is on trial at Clearfield for murder and rape.

Dr. Unger was regarded as a key witness of the commonwealth and it is anticipated that his testimony would cover in minute detail the results of his examination of the body.

He followed to the stand four members of the Pennsylvania State Police force, who described being called to the scene of the slaying and the results of their investigation. Presenting their testimony under the questioning of District Attorney John K. Reilly were Detectives John George, Kenneth Bundy, Donald Bedford and Ed Kerr. Their testimony was almost in duplicate, as they were led through the details of being called to the area near the Rimer home, of their preliminary investigation during the early evening hours, of finding the young victim along the roadside with her throat cut and badly beaten body and of the removal of the victim to the Maple Avenue Hospital.

It was at that time that Dr. Unger was called to the hospital and conducted his examination.

Dr. Unger was expected to confirm the state's contention that the young victim had been raped during the course of the attack, her throat slashed and the body otherwise beaten. It was expected that his testimony would be continued after the noon recess.

The courtroom was filled to capacity this morning as Judge John Cherry called for the commonwealth to continue its testimony. It was noted that the crowded courtroom consisted mostly of women and teen age friends of Pamela Sue.

---

EXHIBIT P-1-k

---

NO. VI FRIDAY—SEPT. 30

THE COURIER-EXPRESS

Vol. 87-No. 230 Serving Clearfield, Elk and Jefferson  
Counties DuBois, PA., 15801, Friday, September 30,  
1966 Dial 371-4200 12 Pages

[P]OLICE TELL OF FIRST CONTACT WITH  
YOU[NT] "I KILLED HER"-IS

[P]OLEMICS MARK QUESTIONING OF  
PATHOLOGIST

" I KILLED HER"-IS ADMITTED

The story of Jon Yount's first admission that he had any part in the death of Pamela Sue Rimer and of his subsequent arrest, came to light this morning when



detectives of the DuBois State Police sub-station related the details of the defendant's appearance and reported confession early on the morning of April 29, last.

Troopers Edward Kerr and John Phillips described how they were awakened at 5:45 on the morning following the slaying of Pamela Sue near her home in Brady township—and of the initial conversation with the former Senior High School Math teacher.

Trooper Phillips, first witness on the stand this morning for the commonwealth said he was awakened by a loud knocking on the door of the barracks—opened it and asked "Can I help you?"

"I'm the man you are looking for" replied the individual at the door, according to the trooper.

"I then asked him to repeat his message" said Detective Phillips, "which he did."

"I awakened Detective Ed Kerr and we again heard his statement."

Under cross-examination by Defending Attorney Homer King, Detective Phillips denied that the defendant had said "I think I'm the man you are looking for."

Detective Kerr then took up the story on the stand.

"Why are we looking for you?" he said.

"I killed that girl" said Yount.

"What girl?"

"Pamela Rimer."

"How did you kill her?"

"I hit her with a wrench and choked her."

"This is a very serious crime. You have a right to call an attorney."

"I couldn't sleep—this is a police matter. If I wanted an attorney I would have gone to one."

"Did you tell anyone about

See I KILLED, Page 2

I Killed

this?"

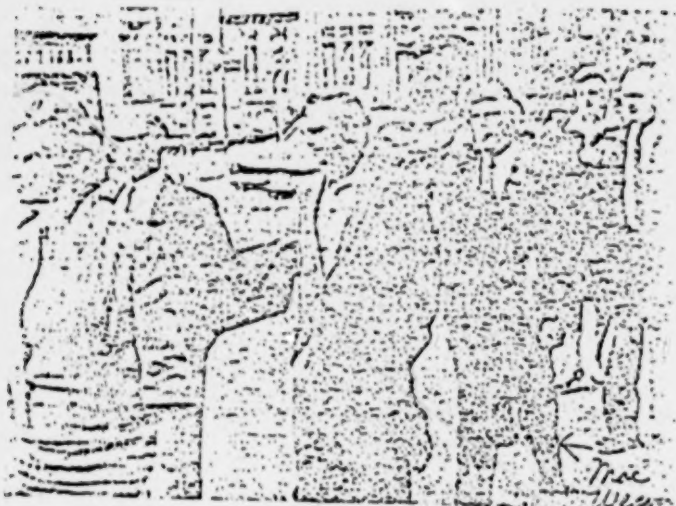
"My wife."

Detective Kerr when questioned stated that the defendant appeared to be calm and collected at the time. He spoke in a moderate tone of voice and did not appear to be excited.

In continuing the story of the first contact with the defendant Kerr stated that Detective Kenneth Bundy, District Attorney John Reilly and Attorney David Blakley, the latter representing Jon Yount appeared on the scene a short time later.

Cross-examination of Detective Keer was then started but was brought to an abrupt halt by a point of law as to the rights of the defendant and a sidebar conference was called by Judge Cherry shortly after 11:00 a.m.

### Jurors Are Escorted To Courtroom



Members of the jury in the Rimer murder trial are shown as they are being escorted back to the Clearfield County Courtroom after their lunch recess period Thursday afternoon. Several DuBois jurors may be identified in the scene.

### UNDER FIRE 6 Hours

By GEORGE WAYLONIS  
Managing Editor

A soft-speaking pathologist was a one-man army yesterday, advancing the commonwealth's case against Jon E. Yount, who is being tried for the murder and rape of Pamela Sue Rimer.

As the trial in the Clearfield County court moved into its third day, it was Dr. John Ungar, of Brookville, who carried the prosecution.

He was on the witness stand six of the eight hours that testimony was taken Thursday.

And for two of those six hours, he was under the sharp cross-examination of Defense Attorney Homer King who is aware that the testimony of Dr. Ungar is the keystone of the commonwealth's case against the 28-year-old ex-DuBois Area high school mathematics teacher, charged with criminally assaulting the 18-year-old honor student and bludgeoning her to death.

For it would be the pathologist's findings concerning the cause of the death, and his determination of rape that would go far in determining guilt.

His testimony would be tantamount with the testimony that will come later from Trooper Donald Bedford who will eventually relate how Jon E. Yount came to the DuBois sub-station early the morning of April 29 and said: "I think I'm the man you're looking for," after which he offered a statement in which he related details of his meeting Pamela Sue Rimer on the red-dog road leading to her rural home near Luthersburg.

For that reason, the defense attorney was barking more, but was he biting?

His continued cross-examination, often times quite lengthy, upset the time-table of the commonwealth. For that reason, presentation of their case is taking longer than expected. It had been hoped to complete the commonwealth's case Friday, but District Attorney John K. Reilly today could see it now extending far into Saturday. Judge John Cherry said yesterday he plans to continue court on Saturday.

In the cross examination to date, very little new information was added to the record.

The probing of Pamela's social life was expected and a natural thing to seek out, but it produced nothing new.

Defense Attorney King barked loudly when he learned that

See UNDER FIRE, Page 2

Page Two

### Under Fire

Detective Kenneth Bundy did not have a copy of the report from the State Police Crime Laboratory, Harrisburg, in his possession. The Defense Attorney wanted to see it and could it be possible for Detective Bundy to have it in court before the end of the day.

This backfired because he apparently had forgotten that an opportunity to examine the report had been made to the Defense. The report had been examined by David Blakley, of DuBois, of the defense staff before the trial started.

Proceedings opened Thursday morning with Trooper John George telling of assisting Cpl. John Magas in the taking of photographs. Another of the many photographs was admitted into the record, and another denied.

Detective Kenneth Bundy told of obtaining the items of clothing from Pamela's body as each was removed by Dr. Ungar prior to the autopsy.

Two other troopers testified briefly, to maintain the continuity of the commonwealths' case, as Mr.

Reilly said. They were Donald Bedford, the prosecutor and Detective Edward S. Kerr. Mr. Bedford told of escorting the ambulance carrying the body to the hospital; while Mr. Kerr told of interviewing Mr. and Mrs. Rimer.

Dr. Ungar's testimony was interrupted when Douglas Rimer, the murdered girl's father, was called to the stand to open the afternoon session. He had been scheduled to testify earlier in the week but was excused.

It had been requested he take the stand. And it was brief. He told of driving his daughter to school on the morning of April 28. And of finding her school-books and personal belongings scattered along the red-dog road, about 1200 feet from their home. There was no cross-examination of Mr. Rimer.

The oral testimony of Dr. Ungar was jam-packed with countless details of his findings during the autopsy which was conducted at the Maple Avenue Hospital.

But his oral testimony failed to include everything that had been included in the written report of the autopsy and this was the center of polemics between the witness and the defense attorney. This report, incidentally, was not entered into the record because of an objection which was sustained by Judge Cherry.

An example of an omission was mention of slight wounds around the thighs, which was not included in the written report. Dr. Ungar countered that he had expected photographs to be introduced that would show these wounds. He added that he did not have

the photographs on hand when the report was prepared.

As the cross-examination continued a verbal battle between Dr. Ungar and Mr. King ensued, with the exchange of opinions regarding findings of pathologists.

After one verbal battle, the jury was taken from the courtroom after which Judge Cherry read into the record that the Defense council had prevented Dr. Ungar from consulting his autopsy report during his oral testimony. All the while, the Defense had a copy of the report on its desk. After this recess, Dr. Unger had his report on his lap.

The defense was emphatic in having the pathologist reiterate that the only clothing missing from the body of Pamela was a stocking and a sneaker. All her garments, including her undergarments, were intact on the body when it was received in the autopsy room of the hospital.

Dr. Ungar denied adding or subtracting any facts from his findings. He pointed out to the defense that certain chemical tests were made after the autopsy was concluded; and it was impossible to include all in the initial report which was dictated during the actual post mortem.

In opening his testimony at 1:15 p.m. Thursday, Dr. Ungar related how he removed each article of clothing, and in turn, presented each to Detective Kerr who labeled each, and latter, with Sgt. Harry Ellenberger boxed the items at the sub-station. These later were taken to the Harrisburg crime laboratory for examination.



Continuing his testimony, Dr. Ungar said Pamela's hair was severely matted, due to blood. After separating the hair, he uncovered wounds of a "peculiar type." All the wounds, he said were confined to the left side of the head, with the exception of one on the back of the head. The wounds were "ragged and sharp, if you can conceive something like that," Dr. Ungar testified. These could come from a sharp and blunt instrument, he said.

Wounds on the scalp were the first to be inflicted, Dr. Ungar contended. These were on the left side of the scalp. There were contusions on the left forehead and the left side of the face. His examination of the brain, toward the front and the back, showed considerable bleeding deep into the boney vault of the brain. He found evidence of brain damage he said, with small bleeding scattered over the brain. This is the type of damage occurring in boxers, he compared.

There was no skull fractures, he pointed out emphatically, and this point was renewed later by Mr. King in his cross-examination.

Continuing, Dr. Ungar said small wounds were noted along the left forehead and face, which were different than those on the skull. These, he said, were inflicted by a blunt instrument.

He told of removing the stocking from around the neck, where it hung loosely, and which had two knots. The stocking was frayed, almost to a point of breaking, he testified. But, he added, there were no marks on the skin around the neck.

Wiping away "froth" at the neck, he uncovered three incisions. These were different than the other

wounds, as if inflicted by a sharp instrument. The first, he said, crossed at the Adam's Apple region but did not reach the air passages. Slightly below that was another that went into the "wind pipe." And the third carried into the "voice box." She was alive when these wounds were inflicted, Dr. Ungar contended.

The lungs were heavy, he said, and contained much blood.

The items of clothing were identified by Dr. Ungar. Despite identified by Dr. Ungar. Despite items were admitted as evidence.

---

EXHIBIT P-1-1

---

NO. VII SATURDAY—OCT. 1st

THE COURIER-EXPRESS

-No. 231 Serving Clearfield, Elk and Jefferson Counties DuBois, PA., 15801, Saturday, October 1, 1966  
Dial 371-4200 12 Pages

[Y]OUNT STORY TELLS OF ATTACK ON VICTIM  
STRUCK PAMELA SUE WITH WRENCH AND ...  
STATE WILL CONCLUDE CASE TODAY

## Victim of Attack



The above is a picture of Pamela Sue Rimer taken for the 1966 D.H.S. Year Book which has not yet been released to students. Pamela Sue was an honor student at the DuBois Area High School and was due to graduate one month after her brutal slaying.

## DEFENSE OPENS MONDAY

The Commonwealth is scheduled to complete its testimony today in the case against Jon Yount, former DuBois Area High math teacher, charged with the brutal slaying of one of his students last April 28, 18 year old Pamela Sue Rimer of Brady township.

It was expected that Attorney Homer King of Pittsburgh and Attorney David Blakley would open the case for the defense when the murder trial resumed at Clearfield Monday morning.

First witness on the stand this morning was Peter Kennis, 18 year old son of Mr. and Mrs. Peter Kennis of the Sykesville-Troutville area. Peter, a graduate of the Reynoldsville-Sykesville high school in the class of

1966, reported that he had been escorting Pamela Sue to square dances in Grampian Saturday nights or to an occasional movie in DuBois for more than a year.

He was asked by the defense if he had been intimate with the victim at any time and he replied "emphatically not. I respected her and we were just the best of friends." *He didn't answer like that at all - He said - "why - No - we knew we ...*

Dr. John Ungar, pathologist at the two local hospitals, was recalled to the stand and questioned as to the head wounds on Pamela Sue when he examined her at the autopsy. He reported that there was considerable blood on the wrench and that the head wounds had undoubtedly been inflicted by such a blunt instrument.

Detective Kenneth Bundy reported that mud found on Yount's car during the investigation was the same as that of the red dog road, where the crime was committed.

Lieutenant Christian Bumbartner of the crime laboratory in Harrisburg reported finding traces of human blood on the defendant's coat, on the car seat of his car and on Pamela Sue's underclothes. *One little spot.*

Harold Portzer, DuBois car dealer, told of the sale of the station wagon to Yount - the car in which the attack was reported to have taken place.

Shortly before the noon recess it appeared ...

#### Defense

fore the jurors by the end of the day.

It was doubtful that any defense testimony would be started today, with the likelihood defense attorneys would make their presentations with the opening of court Monday.

With summations yet to be presented it was generally anticipated that the case would be concluded and go before the jurors about Wednesday of next week.

---

**STRUCK PAMELA SUE WITH WRENCH AND  
THEN 'WENT BLACK'**

**By GEORGE WAYLONIS**

**Managing Editor**

Mountains of evidence—from the pen and lips of Jon E. Yount himself—were stacked expertly by the Commonwealth as it headed down the home-stretch in its case against the 28-year-old former DuBois Area high school mathematics teacher, charged with the rape and slaying of Pamela Sue Rimer.

The sockdolagers were a troika of statements from the defendant himself, obtained by state troopers and District Attorney John K. Reilly only hours after the father of two turned himself in at the DuBois sub-station.

1.) Jon Yount provided police with a statement, prepared in his own handwriting, which linked him to the crime.

2.) Drew a diagram, in his own hand, showing police the route he had traveled to the Brady twp. scene and where he had tossed away a wrench.

3.) An oral statement by Yount, taken in shorthand by Mrs. Dorothy Campbell, the district attorney's stenographer, was read into the record not once but twice because the defense attorneys insisted she read from her original shorthand notes.

In that oral statement, Yount elaborated still further concerning his actions the evening of April 28 when the bloody body of the honor student was discovered on a wooded hillside about a half mile from her home.

This is the first major trial in Clearfield County since the "New Procedures" of investigation were used; and commonwealth scored on every count.

The statement in Yount's handwriting was introduced during the testimony Friday afternoon by Trooper Donald Bedford, the prosecutor in the case. This is the same statement which was read by the Trooper last May 1 when Yount was formally arraigned before a DuBois alderman.

Although objected to, the statement easily was accepted into the record.

But the oral statement, as recorded by the stenographer, had tougher going because Mrs. Campbell casually mentioned she had made a "rough-draft" of her shorthand notes. Defense Attorney Homer King pounced on this opportunity, demanded the commonwealth made the "rough-draft" and original notes available. The defense scanned the shorthand notes.

The jury appeared to listen with extra attention as the stenographer slowly read from her

notes. Then the District Attorney had her read the official draft. There was very little difference.

"Are you a school teacher?"

"I was."

"You have a right to an attorney."

"I haven't decided on one."

"Anything you may say may be held against you."

"It's all there in My Report (his written statement)."

And then he told his story to the county prosecutor. How he and a couple teachers thought about ... and where they could hunt and fish 15 or 20 years from now. He was going to the midwest to school for four years and...

#### Struck

he said. He had known she lived in this area. He knew where most of his students lived, from talking to them.

She got upset when he asked her to go for a ride. "Naturally she would," he said. He added that he became panic stricken and reached for the wrench. He had had trouble with a burning casing on the gun and had thrown the wrench under the seat with a sandbag after hunting woodchuck on Monday. He told of hitting her a couple or three times. She started running through the field, and he watched her and he didn't think he could catch her. "She was pretty hysterical," he related. But she fell and he reached her.

He said he couldn't get through to her. "I went black," he related, "I was so weak I could



hardly stand up." He went back to his car, spotted his wrench shining on the ground. He almost stumbled over it. He picked it up and later threw it away along the road between Luthersburg and Rockton. "I don't know why I did it or anything I did," he said.

He remembered his coat and trousers being bloody. He burned everything but his suit. He put on another suit and picked up his children at the babysitters, and took them to his mother's home.

"It seemed as if it did not happen and any minute I would wake up" he said, but he realized he wasn't dreaming when his wife told him the "police were looking for a car like yours." He later awakened his wife and told her what had happened.

"There was no use running away. I had to face up to what I had done." He told his wife to tell his parents.

Asked if he had relations with Pamela, Yount replied: "I don't believe. I don't think I could have, I was so weak. It wasn't my intention. I must have suggested something like that in the car because she became so upset." Had he been in the area looking for her? "No." He had seen "for sale" signs on some lands in that area.

Asked how he was treated by the troopers, "They have been very kind men. The officers have been gentlemen." Did they make any promises? "No."

-0-

Nothing additional was brought out in the cross-examination.

Detective Kenneth Bundy told of obtaining the Yount Rambler station-wagon at the home of his parents in Sabula where his wife had driven it.

Various parts of the auto—the front seat, door glass, upholstery cover—were identified by Mr. Bundy.

These items, along with the clothing items from the body of Pamela Sue, have been identified. And they will be identified again when the representative of the State Police Laboratory at Harrisburg testifies today.

Trooper Bernard Gorman told of discovering a suit stuffed behind a board in a barn adjacent the Jon Yount property in the Gelnet Section.

He also testified to finding the wrench, and showing it to Yount. He said Yount identified it as his own. The search and discovery of the wrench was made May 1 as troopers were taking the suspect to Clearfield County Jail after the formal arraignment in DuBois. Mr. Gorman also removed ashes from a stove at the Yount place, but could not identify them. "They are just ashes," he remarked.

Friday's court opened with Dr. John Ungar, a pathologist from Brookville, completing his testimony. he repeated parts of his earlier testimony, concerning the cause of death. This, essentially, he said, was caused by loss of blood which flowed into the lungs. This can be likened to "drowning in your own blood," he said.

Trooper Bedford, in beginning his afternoon's testimony, told of having Yount empty the contents of

his pockets soon after Yount's statement to them that "I'm the man you're looking for."

Among the contents of the pocket was a small knife. This Bedford retained and turned over to Detective Kenneth Bundy, who was in charge of various pieces of evidence.

The courtroom was at near capacity throughout the day. About 90 percent of the onlookers were women. Families of both the defendant and the victim continued to attend.

---

EXHIBIT P-1-m

---

VIII MONDAY—OCT. 3rd

THE COURIER-EXPRESS

[Vol.] 87-No. 232 Serving Clearfield, Elk and Jefferson  
Counties DuBois, PA., 15801, Monday, October 3,  
1966

Dial 371-4200 16 Pages

[Y]OUNT WILL TESTIFY IN OWN DEFENS[E]

DEFENSE SEEKS TO PUNCTURE TIGHT CASE

By GEORGE WAYLONIS

Managing Editor

Unable to puncture the air-tight case while being constructed by the Commonwealth, defense attorneys today can be expected to pioneer a new route to pull Jon E. Yount from the spectre of the death penalty.

And they have their work cut out.

For four days District Attorney John K. Reilly and his assistant, Ervin S. Fennell, carried out the continuity of the case against the brilliant mathematics teacher at DuBois Area Senior high school, charged with killing one of his students, Pamela Sue Rimer.

Using nearly 90 exhibits, the prosecution, in echelon, built its case the hard way, following new procedures outlined by recent supreme court rulings.

Defense won the duels of "objections" but the commonwealth won the war-of-words. Commonwealth witnesses, mostly state troopers, were perfect. Never once were they shaken from their original testimony. The very capable defense attorney, Homer King, made continual stabs where he thought there might be an opening but his pointed questions glanced harmlessly into vacuums, free of doubt.

Each phase of the commonwealth's case was continually reinforced with corroborating testimony and evidence.

Before completing its case at 2:00 p.m. Saturday, the commonwealth unfolded the testimony of Lt. Christian H. Bomberger, of the Harrisburg crime laboratory. He had examined countless items, from the clothing of the victim to parts of the station wagon owned by Jon E. Yount, and also items of clothing of the defendant. In some cases, Type B blood was noted, its other human blood, and in others "just blood." Some of the exhibits were tossed out after objections from the defense. But the Commonwealth had shown how thorough it has been in preparing its case.

Because this is a case of a schoolteacher being charged with the murder of one of his pupils, the trial has been commanding attention nationwide. Radio networks, plus news associations, have been following the progress of the trial.

And Judge John Cherry has maintained the judicial decorum of the trial. There has been no carnival atmosphere as in the Aljoe trial particularly when families would gather gayly for a sack lunch in corridors or anterooms.

Corridors were guarded by sheriff's deputies. The usual courthouse loafers were absent. Former DuBois Mayor P. B. Dillman, on special duty, handled a post at the spectator's entrance.

The last witness Saturday was

See DEFENSE, Page 2

#### Defense

Lt. Donald Cutting, of Reading, who was at the Punxsutawney headquarters on April 28, the day of the crime. He told of going to the scene to insure that the investigation apparatus was in gear. His appearance as a witness was asked by the defense but they had no questions for him.

During Saturday morning's session, Dr. John Ungar, the pathologist, was recalled to the stand and was handed a wrench and asked if such an instrument could make the type wounds he found on Pamela's skull. He answered: "In my opinion, yes." The defense asked if that was a mechanical opinion and not a medical opinion. Dr. Ungar replied "... a medical opinion."

And the garter belt and panties of the victim returned to the testimony. At the time of the post mortem, Dr. Ungar reported seeing no traces of blood on either, but Lt. Bomberger stated he had discovered B type blood on both items. *One spot*

The Harrisburg trooper chemist also testified to testing the undershorts of the accused and finding a "little blood" on the front of the trousers.

The bone-handled boy-scout type pocketknife, obtained from Yount, produced no presence of blood, the chemist testified.

Detective Kenneth Bundy testified to making plastic casts of tire marks in the red-dog road.

Speculation was intense as to what course the defense would take to erase the impact of the evidence and testimony against Yount.

Sandy-haired Attorney Homer King has shown signs he can be ebullient in the courtroom. And this he is expected to be when he begins calling his witnesses today.

The testimony of a psychiatrist is a foregone conclusion. But what else?

The trial is obtaining prominent space in Pittsburgh newspapers, Mr. King is from Pittsburgh.

From indications, Mr. King will recall Mike Kennis, of Sykesville Rd, to the stand. This 18-year-old had been dating Pamela Sue for about two years. & *the nite before*.

In his cross-examination Saturday, Mr. King had brought out that the youth had driven Pamela Sue

home from classes on the afternoon of April 27, the day before her death. Mr. King showed there was no one at the Rimer residence at that hour—the mother was working at a Reynoldsville plant and the father at a construction job. But Mike testified he escorted Pamela to her door and then returned to his auto and drove to his home. As Mike left the stand, Mr. King was heard to say softly to himself: "We'll hear from you later." But if he calls the youth, he'll be stuck with his testimony, and not be able to cast any doubt on it in the summing up to the jury.

And what impact did the emotional outburst of Mrs. Douglas Rimer make on the jury the opening day of testimony?

This opines that Mr. King will summon the mother of Yount to the stand, to quiz her of her son's youth, his desire for an education and his subsequent high status in mathematics which lead to his being awarded a special scholarship at the University of Montana.

Home influences can become a strong factor in unfolding the personality of Jon E. Yount, brilliant mathematics teacher, age 28, charged with the rape and murder of one of his students—an honor student since the first grade.

Gaining sympathy for Jon E. Yount could very well be the major objective of his defense today.

#### WIFE ON STAND THIS A.M.

Jon Yount, charged with the death of 18 year old Pamela Sue Rimer, is due to take the stand either Tuesday—or Wednesday at the latest—according to his chief defense attorney, Homer King, of Pittsburgh.

This was indicated this morning as the defense opened its case to save the life of the former DuBois Area High School teacher, facing the death penalty in the slaying of Pamela Sue Rimer, one of his students on a lonely road near her home in Brady township, seven miles east of DuBois.

Appearing on the stand this morning as one of the principal defense witnesses was Mrs. Ruth Yount, the alleged slayer's wife, who told of the events leading up to the tragedy and of the developments in the Yount household immediately thereafter.

Mrs. Yount took the stand at 9:30 a.m. and for nearly an hour, under the direct questioning of Mr. King, related the story of her courtship and marriage; of the fact that her husband had frequently suffered severe headaches and attacks of hives; that he had been in an automobile accident April 3 and had complained of severe headaches after that period; that on the evening of April 27 (the day before the murder) Yount had turned off the television which she was viewing with a curt remark "Don't do that again;" that on the morning of the slaying he had awakened with a severe headache, requiring a compress applied to his eyes, that he had awakened her at 4:30 a.m. on the morning of April 29 and told her "I think I'm the man they are looking for." He was nervous and crying at the time, according to Mrs. Yount. He then told her "I have to go to the police."

Previous to the time Mrs. Yount was called to the stand, Attorney King had opened the case for the defense, calling on the jury to "view the whole man" in speaking of the defendant. He stated that his client would be called to the stand as part of the defense



case and that he would be asked to repeat his previous statement that he swung at Pamela Sue but thereafter had "blacked out and remembered nothing."

Other witnesses scheduled to be called are Yount's parents, several doctors, Mr. Van Sice a neighbor, and friend with whom he was planning to purchase land in the Brady township area.

The Clearfield County court room was again well filled this

See WIFE ON, Page 2

Wife On

morning as the defense opened its case.

Mother On Stand

Mrs. Caroline Yount, mother of the defendant was on the stand this morning shortly before noon. She testified that her son, Jon, had fallen down the stairs of their home at the age of 4 years and had injured his head severely. He had been taken to a doctor and his injuries treated. She also testified that he had suffered from hives and asthma as a child.

She reported that her son had come to her home about 8:30 p.m. (about three hours after the slaying) had sat on a couch and stared into space. She asked him what his trouble was and he replied "I'm sick." He left shortly thereafter and said he was going to his own home.

Judge Cherry called for a recess shortly before noon.

## EXHIBIT P-1-n

---

No. IX TUESDAY—OCT. 4th

## THE COURIER-EXPRESS

Vol. 87-No. 233 Serving Clearfield, Elk and Jefferson  
Counties DuBois, PA., 15801, Tuesday, October 4,  
1966

Dial 371-4200 24 Pages

YOUNT HAS BRAIN DEFECT, REPORTS  
SURGEON

## BRAIN DAMAGE AS CHILD

At the time Jon Yount was examined by a neurosurgeon in his office in Pittsburgh July 6 last, he had a definite brain defect—the same defect from which he was undoubtedly suffering April 28, when he is alleged to have killed Pamela Sue Rimer, 18 year old Brady township girl and a former student of the defendant.

That was the crux of a statement made by Dr. Yale David Koskoff, Pittsburgh brain specialist as he appeared on the witness stand at Clearfield this morning and was questioned by defense attorneys. In his opinion, and as a result of encephlogram tests taken last July, Yount is definitely suffering a brain defect as the result of injuries suffered as a child, and was not completely responsible for his actions of last April 27 when he is alleged to have raped, beaten and stabbed to death the DuBois Area High School honor student on a lonely road near her home.

For a period of two and one half hours this morning Dr. Koskoff was questioned under direct examination by the defense and was then awaiting cross-examination by District Attorney John Reilly as the noon recess approached.

Electric impulses of Yount's brain were made in the encephlogram tests and indicated extreme sensitivity in the temporal lobe, according to Dr. Koskoff's testimony, resulting in partial lapses of memory and borderline epilepsy. This borderline epilepsy and memory difficulties would not have proven troublesome from an academic standpoint—in which field Yount was considered to be an outstanding mathematician.

"These changes come in outbursts" said the Pittsburgh brain specialist "and cause loss of memory at times." The state is expected to indicate that Yount suffered from loss of memory during the attack and was not responsible for his actions at the time.

The defendant is said to have

See BRAIN DAMAGE, Page 2

#### Brain Damage

suffered an injury as a four year old child when he fell down a flight of stairs, and thereafter suffered continuous headaches.

Tracings taken during the extensive tests by the surgeon revealed tendencies usually normal in a child, but not in the brain or actions of an adult, according to the testimony.

The jury requested additional information of a specific nature and huddled with Judge Cherry, the

defense and state attorneys shortly before the noon recess.

Jon Yount spent most of Monday afternoon in his own defense and was not recalled to the stand this morning.

Additional defense witnesses were scheduled to be called during this afternoon's session.

---

### YOUNT ON STAND-DESCRIBES EARLY SICKNESS AND BLACKOUTS

#### CANNOT RECALL HIS POLICE STATEMENTS

By GEORGE WAYLONIS

Managing Editor

Jon E. Yount has a bowling average of 165-170.

It was Wednesday evening, April 27—his night for bowling. But he didn't feel good. He had a head ache. He tried to get someone to substitute for him. But he could get no one, so he bowled.

And he returned to his Gelnet home after bowling. His wife was watching the late movie. He walked over to the TV set and snapped it off.

"Don't turn it on again," he said. She didn't. And they retired for the night.

He had another headache when he awoke the following morning—Thursday, April 28.

That is the strange incident to which Mrs. Ruth Yount testified yesterday morning as the defense of the 28-year-old ex-DAHS mathematics teacher was started. And his blond petite 25-year-old wife, mother of his two children was the first witness.

And in a surprise move, Jon E. Yount, himself, was called to the stand early Monday afternoon. He remained there all afternoon, until court recessed for the day, shortly after 5.

He was asked about that shutting off the television set. Asked by District Attorney John K. Reilly if he remembered, he said "Not really," and he hadn't remembered doing it before.

And that is the way it was with much of Yount's testimony during the cross-examination. He wasn't recalling yesterday what he, himself, had written in his own handwriting of his meeting Pamela Sue Rimer on that red-dog road in Brady twp. April 28; or the oral statement he had given the district attorney's, several hours after he voluntarily appeared at the DuBois state police sub-station.

And he was confronted with lines from the court transcript, of Sept. 19, 1966, concerning his conversation with Detective Edward Kerr soon after arriving at the sub-station. He disputed this stating that he poised the statement "I killed that girl?" as a question and not as a statement. The District Attorney countered saying the structure of the sentence didn't allow for a "question-mark quotation."

From the opening remarks to the jury by Defense Attorney Homer King, it was apparent the defense would bring out the full personality of the defendant. "The chapters in a man's life are many and varied—even in a young man of 28," Mr. King said.

Illness was the perennial companion of Jon E. Yount. To this his wife testified. To this his mother testified. And to this he testified.

This is the way it was from the start. His mother, Mrs. Caroline Yount, said he wasn't a healthy baby. They had had a hard time getting the correct formula for him.

And at age 4, he fell down 12-13 basement steps and hit the front of his head on the concrete floor. Several days later his eyes began to swell. He was taken to Dr. Lewis, who said the boy had hives. Later on, the mother said, "he got asthma real bad." She testified he came home frequently from school with a headache, or nauseated.

And later he was taken to Dr. Sargeant, in Falls Creek, and tested for allergies. He was found to be allergic to 20 items. And while a junior in high school, he was bedfast two weeks. Asthma was the reason, his mother testified.

The highlight of the afternoon came when Jon E. Yount took the stand and told the highpoints of his life:

After graduating from Sandy high school in 1956, next came two years at the DuBois Campus, and two more at State College. He started in 1959 for his master's degree and received it in 1965. He taught mathematics, mostly geometry; and chemistry a couple years.

He remembered vaguely his grade school life; and having missed much school because of hives. "I have hives on my body at this time" he said.

And he told of going to church since he was old enough to go. He usually told his mother where he was going or what he was doing. That was his home training.

Since April, he testified, he had frequent neck pains, which he believed resulted from an auto accident in New York State on Good Friday April 8, 1966. He, and another teacher, John Schultz, were enroute for two days of fishing at Catherine Creek. While stopped at a traffic sign, his station wagon was hit from behind. His head hit the door frame and he was almost snapped into the back seat.

He testified he couldn't move his neck for several days. Pains at the base of the skull began developing. No, he said, he did not seek medical aid. "Just put it off and off," he testified. "Momentary blackouts" also began developing he said.

And then he told of April 28, going to the Goodrich plant to see his wife, and then going to Brady twp. to look over possible "shooting lands."

He told of recognizing Pam Rimer along the road. And then stopping and asking about lands for sale. He remembered saying to her: "As we ride along, will you point out this (property) to me." She became upset, he testified, and said "stop the car, she'd walk home."

She was saying something, he testified, and it "dawned on me that I'd better talk to this girl."

He said he held onto her coat, and she started to fight, and swinging her umbrella. He said he had a wrench in his hand. "I don't remember picking it

**CANNOT RECALL, Page 2**

**Cannot Recall**

up." he testified.

"What was the next thing you recall?" he was asked.

"Running." he answered.

As he was giving this testimony, Lona Zartman, of RD DuBois, girl friend of Pamela, and the first person to come upon her body rose from her seat in the spectator section. As she sidled from the bench row, she was staring at Yount on the stand. She left the room.

Continuing, Yount told of turning his car around. He noticed spots of blood on his shirt and suit. "Couldn't put two and two together," he testified.

Arriving home, he threw his white shirt and t-shirt into the blazing fireplace. He later stretched out on the bed.

During his testimony, he spoke freely, without too much hesitance. His voice was clear and crisp.

Before going to the sub-station, he had told his wife: "For some reason, I think I'm the man they're looking for."

And at the station, he said, he was "pretty confused." He said "the fellows (troopers) were telling me things that happened that I didn't know.

Asked by Mr. King if he had had relations, he replied: "No sir, I did not."

Asked if he intended her harm, he replied: "I intended this girl no harm."

At the start of the cross-examination, he replied he had no trouble in school, either with grades or



teachers. In fact, he skipped a grade and ended in grade and high school education in 11 years.

When his mother was on the stand, she said her son went to church services and Sunday School regularly and had played the piano in Sunday School for five years. But when he was cross-examined by Mr. Reilly, Yount said he didn't go to church Easter Sunday, two days after his auto accident while on the fishing trip. He added that he hadn't gone to church in the past year, but when he was younger, he had always gone.

In answer to Mr. Reilly's question, the defendant said he began having "partial blackouts" and a "dizziness as if you are going to faint." And he told of "seeing spots before my eyes." He said he told no one of his problems in this regard. "Did you keep them to yourself?" "Yes," he answered.

He denied knowing Pam's school bus, route or time it stopped near Pam's home.

When quizzed about his handwritten statement and the oral statement, Yount became legalistic, avoiding any assumptions. He continually said he didn't know what had happened concerning the tossing away of the wrench and the burning of his shirts.

Asked why he didn't burn his suit, he replied: "I'd like to know answer to that myself." He had owned only two suits, he said:

Later, he said he had "no concept" of events on April 28. He denied that his conscience was bothering him. Instead, he said, he went to the sub-station for two reasons: 1. "suspected that I had done something"

and 2. "I was hunted and what was it that I had done."

The district attorney remarked that Yount was not remembering what he did, but was remembering what he did not do. He didn't deny that he had written the statement or had given the oral statement. He said the police were making suggestions of things he had done and he was agreeing with them. "They had me convinced," he said.

During his testimony, red blotches were noticeable on Yount's forehead.

Concerning a possible liaison, Yount said he didn't do it because "I don't remember doing it."

He was shown photographs of the field in Brady twp.—and the body of the victim as it was found. Concerning the first, he said: "It doesn't mean anything to me," and to the second, he said: "I don't remember anything like that."

Judge Cherry concluded the session for the day after Mr. Reilly had asked how a question mark could be placed in the quotation which Yount disputed. The defendant replied: "There isn't too much of this that makes sense."

The defendant's testimony, apparently, is the prelude to the expert testimony scheduled for Tuesday when a psychiatrist and a neuro-surgeon are expected to testify concerning the headaches and blackouts to which the defendant frequently mentioned. As Mr. King said in his opening, the doctors will tell of examinations and the "illness this boy has."

His wife told of their early marriage, in the months after January, 1955 when they went hunting, fishing and bowling together. She told of his frequent complaints about headaches. She had advised him to see a doctor but he said: "They'll go away."

Mr. Reilly handled the duties alone. His assistant, Ervin Fennell was absent from the table.

The courtroom was at capacity long before the session started. Many were turned away throughout the day. Of the audience, about 97 percent were women.

The mother of the victim and the mother of the defendant had their first meeting, it was brought out in the testimony of Mrs. Caroline Yount.

Mrs. Douglas Rimer had stopped at the elder Yount's home near Sabula last July. Each broke into tears, Mrs. Yount said. They discussed their children briefly. That was all Mrs. Yount said and Attorney King didn't inquire what else was said. *Vet!*

---

EXHIBIT P-1-o

---

No. X THE COURIER-EXPRESS

Vol. 87-No. 234 Serving Clearfield, Elk and Jefferson  
Counties DuBois, PA., 15801, Wednesday, October 5,  
1966

Dial 371-4200 24 Pag[es]

MEDICAL-LEGAL BATTLE CONTINUES AT  
T[RIAL]

## As C-E Correspondent Views Trial



A rough sketch of the Yount trial by Joan Swigart, Courier-Express correspondent, as she sat in the courtroom at Clearfield Tuesday afternoon. Photographs are not permitted in the courtroom by Judge John Cherry. The view shows the defendant, Jon Yount, sitting with his attorney, Homer King and several of the 12 man jury.

## DEFENSE CASTS SHADOW

A medical as well as a legal battle was continuing to unfold in Clearfield County Court today as attorneys for Jon Yount, accused of the slaying of 18 year old Pamela Sue Rimer, continued their fight to save his life.

Defense and commonwealth attorneys countered with legalistic maneuvers as they offered expert

testimony in their efforts to prove that the defendant is legally sane—or that he was not responsible for his actions on the day of the murder—that Pamela Sue had been raped either prior to or after her death—or by the defense that the young high school honor student had not been sexually molested during the attack—or such an attack might have been committed the previous day.

Appearing as the first witness this morning for the defense was Dr. Cyril Wecht, chief forensic pathologist for the Allegheny County Coroner's office, of Pittsburgh.

Under questioning by Chief Defense Counsel, Homer King, Pittsburgh criminal trial attorney, Dr. Wecht testified that "This girl may not have been raped at the time of the attack as judged by the factors appearing in the state's pathology and autopsy report." He was referring to the report submitted previously by Dr. John Ungar, pathologist at the DuBois and Maple Avenue Hospitals, who examined Pamela Sue's body after death, and indicated that it was his opinion that she had been raped during the course of the attack and that she had been beaten about the head and had suffered other slash wounds which combined to cause her death.

The defense hammered at this autopsy report this morning.

Dr. Wecht said "The autopsy report does not contain a single item mentioned of superficial wounds to the abdomen region, pelvis or thighs of the victim—nor were there any stains on the victim, on her underclothing or clothes, which would indicate that

she had been sexually attacked. The body was not torn in any degree."

Dr. Wecht was asked a question specifically on the Ungar autopsy report as to "whether it would be unusual for an expert

See CAST SHADOW, Page 2

#### Cast Shadows

pathologist to overlook such wounds or stains." His reply was "Yes, it would be highly unusual for this to happen and not to be mentioned in the report."

Dr. Wecht testified that male sperm which the autopsy report showed were on the body could have been deposited there some 18 hours prior to her death. This would place the approximate time as the night before the murder or early Thursday morning, the same day on which Pamela Sue was attacked and murdered.

It was expected that the defense would recall a friend of Pamela Sue's to question him about taking the victim home in his car the afternoon before the ...

---

## TENSION GRIPS COURTROOM AS TRIAL NEARS CLIMAX

### DEFENSE HOPES TO EASE PENALTY

By GEORGE WAYLONIS  
Managing Editor

There has been a quiet escalation to the Jon E. Yount murder trial.

This was evident yesterday as both sides moved in their heavy artillery. It was the Artillery of the Articulate. Never before in Clearfield County judicial history has a larger group of medical men been assembled to testify in one trial.

There was a tinge of tension and velvet drama as these men were thickening the witness area with a density of standing room only which has prevailed for days in the spectator section.

This trial now is one of major proportions; and public and professional attention. Every trial where a life is at stake is of major proportions but this one is becoming prominent because this one is attracting more from the ... defenses—psychiatry, psychology and forensic medicine.

Just how wide the medial strip is between medical men will undoubtedly begin to unfold late this afternoon in the Clearfield County courtroom where Judge John Cherry is still very much in solid charge.

Defense Attorney Homer King made giant strides yesterday as two of his medical witnesses gave firm support to the testimony of Jon E. Yount a day earlier.

On that day it was only the Younts—wife, mother and defendant—telling of headaches, asthma, and hives—and what affect it had on the 28-year-old ex-schoolteacher, charged with the murder and rape of one of his students, 18-year-old Pamela Sue Rimer.

#### Medical Men Called

But yesterday two medical men came from the famed medical center in Pittsburgh's famed Oakland

sector to back up everything that Yount had told the jurors a day earlier. These two medical men took up the entire court day yesterday.

And there are more to come. This means the trial will be extended and the jury now will not have the case until about Saturday.

While the defense was mobilizing its ramparts for Yount, the commonwealth brought in its medical corpsmen. From the Warren State Hospital came three men. Drs. Arthur Heshino, Eugene Cease and Howard Reinhard. They were the first medical specialists to examine Yount after he was formally charged. And they saw him within a week after Yount had voluntarily walked into the DuBois state police sub-station and said he thought he was the man they were looking for.

A trio dispatched from the Warren State Hospital for one trial? This alone is unique. In previous cases in Clearfield—Jefferson county area, only one medical witness from Warren was used. But these are the men who pronounced Yount mentally competent to stand trial. The trio arrived early to hear the testimony of the defense's first two witnesses, who are professionals of tantamount status.

And Dr. John Ungar, of Brookville, also returned to listen yesterday afternoon. He is the veteran pathologist in this area who conducted the post mortem on the victim and testified at length last week.

### Call Pathologist

It is expected that the defense will call its own pathologist for an opinion on the findings of that post



mortem. And this pathologist is expected to be a combination attorney-pathologist who has figured in many cases recently in the Pittsburgh area.

His testimony will be designed to desintergrate the charge of rape; as the two defense witnesses yesterday were attempting to soften the degree of guilt for murder. The Commonwealth has been asking for the death penalty.

The courtroom again was filled to capacity yesterday. There was SRO but Judge Cherry only allows enough persons in the court room for which seating is available. At the noon recess yesterday, many held on to their prize seats rather to leave for lunch.

And 18-year-old Mike Kennis of the Sykesville area has been called to be "on deck" as a witness. He had testified earlier for the commonwealth because he was the boyfriend of two year's standing of Pamela Sue. He had driven Pam home from school a day before her death. This should figure in more probing by the defense later.

As a result of the trial, Mike's beginning his school year at Penn State has been delayed.

From all indications, he won't be called to the stand until the defense has called its own pathologist. And this will place Mike in a VIP witness category, as far as the defense is concerned.

Medical terminology was the order-of-the-day yesterday, and it occupied the entire day. Judge Cherry called several recesses in order to give rest to his very efficient court stenographer.

The gracious Dr. Yale David Koskoff, highly pedantic, told of submitting the defendant to encephalograms. This is the delicate art of measuring electric impulses from the brain.

From the tracings obtained from this test, and his subsequent consultations with a psychiatrist concerning case history, he diagnosed Yount as having a disorder of the temporal hypothalamic neuronal system of long stand, and chronic brain syndrome. In other words, this is a non-specific disturbance of the brain involving nerve cells—this of long standing.

#### Fall Is Blamed

It was his opinion this stemmed back to the time of Yount's fall down basement stairs at the

See DEFENSE, Page 2

#### Defense

age of 4 or earlier. It was his opinion that the condition can be treated by medication and under the direction of one person, a psychiatrist.

Dr. Koskoff was strong in his belief that Yount's condition would make him incapable of knowing the nature and quality of his act, particularly the April 28 incident. And Yount had this condition on April 28, Dr. Koskoff contended.

In the cross examination, he admitted encephalography can produce an untrue picture but procedures today are extremely accurate. He admitted that Yount's action could occur again and could be dangerous to others as well as himself.

He said that hives and asthma alone could not produce the condition that affected Yount. These, coupled with chronic brain syndrome, could and did.

District Attorney John K. Reilly pointed out this condition had never manifested itself before. The brain specialist said that Yount had over-control, but there was a break through when the impulse was initiated. He reported that Yount had no brain tumor. He also said a cardiogram was taken along with the brain test to insure that his brain machine was not picking up other impulses.

The second half of the one-two punch introduced by Defense Attorney King was Dr. Sherman W. Popchapin, who, in the end of his testimony, declared that it was his opinion that Yount was temporarily insane on April 28—from the time the “explosion occurred” in Jon Yount in his automobile parked on the red dog road near the Rimer home, and until he discovered himself lying on the ground in a field near that red-dog road, and he saw a wrench lying nearby.

It was during this period, Dr. Popchapin declared that Yount did not know the difference between right and wrong. He said, however, Yount’s mental condition was not such that he would remember the details 12 hours later and then forget them several months later.

And Dr. Popchapin believed that Yount, when he testified on Monday, was “enjoying it too much.” This is abnormal, the Pittsburgh psychiatrist declared.

### Fierce Cross-Examination

Even in the face of fierce cross examination from the District Attorney, psychiatrist Popchapin held his ground.

Did Yount pick up his hat and wrench, burn his clothing, place his suit in a neighbor's barn, wipe blood from the automobile, to conceal his guilt? Dr. Popchapin said "no" at first but later relented to "it is possible" ... it could."

The appearance of Drs. Koskoff and Popchapin in this trial is their first appearance at any murder-rape trial in which they offered testimony. It was brought out that Dr. Popchapin is a friend of the Defense Attorney King since college days.

They were the first medical authorities to back-up Yount's contention of his "black-outs". Because he had never received medical treatment for the disorder, no DuBois area physicians could be called in his defense.

The two doctors referred to each other to substantiate their knowledge of Yount's personal history. The psychiatrist had examined Yount five times, a much longer period, he said, than in most cases he has. He said that Yount had a superior IQ, and that Yount had no mental safety blocks in which a person can reject "bad events" from memory. He termed Yount's response on April 28 as a "psychotic rage reaction." And, he said, he was firm in the belief that Yount "has been telling the truth when he says he remembers or does not remember."

Attorney King pointed out that when Dr. Popchapin interviewed Yount in the county jail, there was

an absent of laces in Yount's shoes and his trousers had no belt.

Dr. Koskoff is chief of neurosurgery at Montiefore Hospital, Pittsburgh, and has practiced in Pennsylvania since 1936. He said he spent more than two hours recording Yount's brain impulses. He had found significant brain changes during light and deep sleep. During such periods, he said, possible hidden abnormalities can be uncovered.

The tracing was admitted as evidence. There was no objection.

---

EXHIBIT P-1-p

---

NO XI THE COURIER-EXPRESS

No. 233 Serving Clearfield, Elk and Jefferson Counties  
DuBois, PA., 15801, Thursday, October 6, 1966  
Dial 371-4200 14 Pages

[CA]SE WILL BE IN HANDS OF JURY FRIDAY  
EXPECT EARLY VERDICT

The Jon Yount murder case is scheduled to be placed in the hands of the jury (consisting of 6 men and 6 women) Friday according to reports from Clearfield this morning as commonwealth and defense attorneys prepared to present their summations later today. Yount is charged with the slaying of 18 year old Pamela Sue Rimer last April 28 in a case which is now nearing the end of its second trial week.

At the session this morning the defendant was described as being of a "cautious nature and preoccupied with sex." The description was given by Dr. Eugene Cease, one of two psychologists from the Warren State Hospital who appeared on the stand as District Attorney John Reilly started his rebuttal testimony. The defense had concluded its case Wednesday afternoon.

Dr. Cease disagreed with the contentions of three Pittsburgh medical men and psychiatrists who had previously stated for the defense that Yount was irresponsible for his actions at times, possibly the result of a fall sustained at an early age. He also disagreed with previous testimony regarding evidence presented by the defense in connection with the rape charge against the defendant.

Dr. Cease reported that Yount had a somewhat depressive nature and in his opinion had not operated up to his full mental capacity, but his condition was not regarded as abnormal.

Dr. Hushini reported he could find no evidence of chronic brain damage during the course of his examination and he possessed a good memory, although rather spotty. He had no signs of mental illness.

The entire morning session was occupied by the commonwealth in the questioning of the Warren specialists in an effort to refute much of the evidence and testimony as presented by the Pittsburgh medical and brain specialists.

Final summations are expected to be presented by opposing attorneys this afternoon and the case should be in the hands of jurors sometime Friday.

## PARADE OF CHARACTER WITNESSES ARE CALLED IN YOUNT DEFENSE

Present Final Testimony In Effort To Save Defendant

By GEORGE WAYLONIS

Managing Editor

Maybe this elite witness read the wrong newspaper, too early in the Jon E. Yount murder trial.

Dr. Cyril H. Wecht came to Clearfield from Pittsburgh with an insigne that would make any fictional public defender on television envious.

He had won much attention in Pittsburgh newspapers for his participation in many hot cases in Allegheny county. And he has been a foe of the traditional coroner system in Pennsylvania.

And he had been like a one-man infantry for Allegheny County's District Attorney's new-look in investigation.

He was a member of a very elite group—150 forensic pathologists who belong to an association. Half this number were given automatic membership because they had been practicing in this field but he, Dr. Wecht, was in the other half, who had taken exams to gain admittance.

On top of being a medical doctor, he, too, was an attorney—full-fledged. This made him extra-special.

A Pittsburgh newspaper has been giving page one prominence to the Yount trial since Sept. 27, when their first story was printed....

And the story said "...the opening day of trial had been long awaited in this drowsy county seat in the foothills of rural Pennsylvania."

and the story continued "...An informal relaxed atmosphere prevailed in the courtroom and in the corridors of the musty building mouldering under many coats of red paint on its bricks at the corner of East Second and Market Streets."

And the story continued: "Judge Cherry—the only Quarters Sessions judge in this sixth-class county of 85,000 population—greeted the assembled jury panel with "good morning, folks." This is that kind of community and austerity of the court is breached at times."

Early in his testimony yesterday, Dr. Wecht said he had read the autopsy report as prepared by Dr. John Ungar, of Brookville. Did he have an opinion? Yes.

"In my opinion, this girl was not raped."

Factors in his conclusions were: no mention was made of any superficial wounds around or near the thighs; no stains on the body or undergarments. No clothing had been removed or torn.

He was pragmatic in his conclusions.

Was Dr. Wecht to be the philter in Defense Attorney Homer King's program to nip the strong case the Commonwealth had built against the 28-year-old DuBois schoolteacher, charged with murder and rape in the death of 18-year-old Pamela Sue Rimer?

... trooper early last week, as reported then by the Courier-Express).



And he had an opinion on these: based on the extensive disintergration of the deposit, it had been present for around 18 hours, or more.

This would make the time of deposit 2 to 7 a.m.

In the sharp cross-examination by District Attorney John K. Reilly, Dr. Wecht had not examined the body, had not seen any of the photographs.

At one time in the questioning he said "I have the right to qualify my statement." Here was his legal training coming out. Judge Cherry asked him if he were testifying as an attorney or as a medical man. Dr. Wecht quickly said medical.

In his report, Dr. Ungar had stated the deposit had been present between 6-20 hours.

Before long Dr. Wecht's testimony, and the cross-examiner, bogged down in quotations from published legal-medical books; and before long the jury was hearing that such deposits can continue for 48-72 hours; and that there was no way to determine—to the minute—the life of a deposit.

At one point Judge Cherry cut the witness off short.

Later, before dismissing the witness, Judge Cherry asked two questions to clarify points. They were difficult to answer for the Pittsburgh forensic pathologist who graduated from medical school in 1956 and who said he has conducted 2500 autopsies, or about one-a-day.

The apogee for the defense had been reached a day earlier.

Another witness, who had been standing by this week for the defense, was dismissed before the afternoon session. He was Mike Kennis, of near Sykesville.

After that came a parade of character witnesses for Jon E. Yount. Mayor Kenneth Showers, of DuBois, headed the list. Each was on the stand for about two minutes and were asked routine questions.

Others were Norma Hiller, Continuing Education administrator; Edward Trude, industrial engineer; John B. Schultz, vo-tech teacher; William S. VanSice, auto springs worker; John Frederick Muirhead, stone manager; all of DuBois; John Shickling, teacher, Clearfield; J. Sherman Smith, turkey farmer; Mrs. June Carmella, housewife; Norman Lines, maintenance worker; Eugene Cimino, insurance agent; Clair Naugle, retired metal worker; ... William Rensel, school guidance teacher; Jack McCortkle, biology teacher all of DuBois; Walter Gilbinde, advertising salesman, State College; Tony Roy, lumber mill worker; Lary Himes, truck driver; and Mrs. Martha Cimino, neighbor, as many of the others were all of DuBois...

#### Present Final

wealth began its rebuttal, first calling a policeman from Horsehead, N.Y., but he was excused without testifying; William Rensel and Trooper Donald Bedford, who began explaining Pamela's school schedule. Lona Zartman was also recalled but more legal sidebars and she was excused.

Court was dismissed at 3:30 p.m. ...

... and at that hour Clearfield was not a drowsy county seat in the foothills of rural Pennsylvania

... streets were choked with traffic ... school buses ... coal trucks ... throngs of pedestrians hurrying by...

... a slight rain fell ... glistening on the red paint on the bricks ... the courthouse still was standing ... proudly....

---

EXHIBIT P-1-q

---

NO XII

THE COURIER-EXPRESS

Vol. 87-No. 236 Serving Clearfield, Elk and Jefferson Counties DuBois, PA., 15801, Friday, October 7, 1966  
Dial 371-4200

EMOTION-CHARGED TRIAL NEAR...

LAST CHAPTER OF YOUNT CASE IS NOW WITH  
JURY

By GEORGE WAYLONIS  
Managing Editor

The "Jon E. Yount Story" has gone to the jury for the last chapters.

For eight days the legal processes have unfolded, slowly but surely.

And now, on this ninth day, it is already apparent the trial will go down in judicial annals for its legal excellence .....

The advocates and the judge displayed the professionalism of their profession ... a bright 31-year-old district attorney who has come a long way since his initial contact with a homicide soon after he took office.... a peppery attorney from Pittsburgh, long experienced in civil cases, and ironically, coming to a small courthouse in scenic Pennsylvania to gain impressive status state-wide as a defense attorney ... and a judge displaying a trigger mind in the face of scientific semantics that demanded rulings.

So much rides on the verdict from the jury of seven women and five men. A man's life! And what part of the emerging sciences—psychiatry, psychology, forensic pathology—will play in future trials.

Tension ripped through the principals participating in this living drama for eight days.

And it was no surprise defense attorney Homer King, in ending his one and a half hour summation, choked in his emotions—and his final words were drowned in his sobs.

He hurried back to his chair at the defense table and cried.

Suddenly, he had realized, he could do no more.

It can be reported now that this nearly happened on several occasions during the past eight days. But his emotional pitch was noticed only at the prosecutor's table, and possibly the jurors.

In his summation, Mr. King said Yount had gone to the police with this question in his mind: "If I did do it, why did I do it?" And if he didn't know the nature and quality of the act, he couldn't be held

responsible; and, it follows, he doesn't know if it is right or wrong.

There is a fair preponderance in the evidence of a brain defect, Mr. King said. And the defendant's general reputation is shown by the 18 witnesses.

The criminal assault charge, he declared, was the weakest that has ever been presented. No testimony of liaison was ever presented. The police, the doctors, heard nothing of this from the defendant. The commonwealth must present evidence in this respect, for the burden of proof rests on the commonwealth. Circumstantial evidence is real and lawful, he pointed out, but this bids that other facts must exist. In this respect, he pointed to the items forgotten to be inserted in the post mortem report. "The report of April 28 was honest," he declared, "and why isn't it honest now?"

Softly, Mr. King explained that he didn't wish to malign the victim or one of the witnesses. Did something wrong happen, he asked? This he would leave to the jury to decide.

He reviewed various testimony about the incident along the red dog road, and how Yount undoubtedly viewed this sudden change in his life when his was a life of high morality.

His condition, Mr. King said, was the reason for disposing of the wrench and hiding his clothes. Blood, he said, was foreign to the life of Jon Yount. "Why didn't he throw away the knife?" he asked, adding—he made it available voluntarily to police.

Not by fashion or prejudice does a jury decide, but on the basis of the evidence presented,

Mr. King declared. And he pointed out some witnesses would color their testimony, others would not. This was for the jurors to decide.

Vegetative illness has a psychiatric effect, and Jon E. Yount has a brain defect, Mr. King emphasized. "This is of the illness, part of the disease."

District Attorney John K. Reilly's summation lasted an hour. He first called on the jurors said their task will be dependent on 95 percent fact and five percent common sense.

The most important person in the case, he said, is not in the courtroom. But, he said, we don't know everything that had happened but that common sense can fill the voids. Particularly, he said, what occurred in the station wagon. Pamela Sue Rimer naturally would get upset by what the defendant had said to her in the car.

It was her threats to tell "the proper authorities" that caused Yount to panic, Mr. Reilly said. And panic is not legal insanity, he declared.

He declared the assault came on an unconscious girl. This is the important ingredient in the charge, he added. The parts of the story forgotten by Yount were disputed by the district attorney. "This is not so."

Mr. Reilly emphasized the defendant had to be in close proximity to the victim to bloody his shirt, his t-shirt, and suit coat and trousers.

Two of the witnesses and the victim are not on trial, he continued. The attack is one, he said, that "I cannot condone."

He pointed to the report of the State Hospital doctors and inclination of the defendant toward sex. And the burning of the clothing items, and tossing the wrench away enroute home was a move to hide his guilt.

He said to the jury that if they didn't believe the assault charge, "it is still first degree" because he contended that it was pre...

#### Yount Trial

hill, and then saw her fall, "probably groggy" from the blows on the head. Fearing for his reputation as a teacher, he went after her. "This is premeditation." Mr. Reilly charged.

Not in possession of his faculties? Rubbish, Mr. Reilly added, saying he is normal as anyone in the court room. Did they blame a condition on a fall at the age of 4? He pointed out it is normal for boys that age to fall from trees, porches and stairs.

"The defendant suffers from Sanka syndrome," Mr. Reilly declared "—instant insanity to escape punishment."

And since then he has been absolutely normal, the district attorney said, and adding "normal for 28 years and insane for one hour?"

"Others persons have hives, asthma, headaches. Is he legally insane? Syndomes always remain but Jon. Yount is all right now... All he needed know that it was wrong to take a life."

And in conclusion, Mr. Reilly said "supressing memories too terrible to remember—this is not legal insanity."

-0-

Ironically, the testimony of Dr. Arthur Hoshino, psychiatrist at Warren, disputed the findings of the neuro-surgeon Dr. Yale David Koskoff. At one time Dr. Hoshino was a student of Dr. Koskoff. And the Warren doctor disputed the full value of encephalograms—measuring electric waves from the brain—because the attachments are not inside the brain, where the action is.

It was Dr. Hoshino's opinion Yount knew the quality of his deed if he was in the condition that he was when he was examined for a 10 day period early in May.

The psychiatrist said Yount had aggressive impulses, an average IQ for a college student but he was a superior student. "He has drive and energy and he gets it some place," Dr. Hoshino declared.

The Yount report taken by Dr. Hoshino (of Japanese heritage) is confidential. He pointed out that the district attorney was not told of any of their findings; and the entire report was not testified to yesterday.

Dr. Harold J. Reinhard, another psychiatrist at Warren, was the last to testify. He told of a short interview with Yount a few minutes after his arrival at the hospital; and telling of a staff meeting at which Yount appeared.

When Yount appeared at the state hospital, he weighed 190 pounds. Today he weighs about 175.

Eugene A. Cease, the psychologist, said Yount's emotional factor was one "reacting to the mercy of his



emotions." He termed the defendant having drive, ambition, being impulsive, and eccentric, deveation from normal popular norms, and "explosive tendencies."

Homer King's wife was present at the summation, as well as a law associate from Pittsburgh; and a law friend from Greensburg.

Several motions were placed in the record.

The rebuttal by the commonwealth was ended at 11:47 a.m. And the last summation was completed at 4:20 p.m.

The Jon E. Yount story had been told.

---

### YOUNT'S FATE IN HANDS OF JURORS

A jury consisting of seven women and five men will hold the fate of Jon Yount, DuBois man charged with the murder of 18 year old Pamela Sue Rimer, in its hands this afternoon as it begins deliberations on the vast amount of testimony presented during the eight days of the trial.

Judge John Cherry charged the jury this morning in his final summation, in which he outlined five possible verdicts that might be returned;

1. Not Guilty.
2. Not Guilty by means of Insanity.
3. Guilty in the First Degree.
4. Guilty in the Second Degree.
5. Voluntary Manslaughter.

Judge Cherry then explained in detail the basis on which the various verdicts might be returned; a not guilty verdict if jurors believed he was not responsible in any degree; not guilty by means of insanity, calling for incarceration in a mental institution; guilty in the first degree—which would call for additional testimony to determine the extent of guilt and the penalty to be

See YOUNTS FATE, Page 2

#### Yount's Fate

imposed; guilty in the second degree which would call for a prison sentence of from 10 to 20 years or voluntary manslaughter, in which the crime was committed in a rage or passion.

Judge Cherry pointed to the fact that this was the duty of the state's attorneys to prove the defendant's guilt as such and the duty of the defendant to prove in the minds of the jury that their client was not of sound mind at the time the crime took place.

It was reported from Clearfield that the case would be concluded and placed in the hands of jurors by noon.

EXHIBIT P-1-r

---

NO XIII

THE COURIER-EXPRESS

Vol. 87-No. 237 Serving Clearfield, Elk and Jefferson  
Counties DuBois, PA., 15801, Saturday, October 8,  
1966

Dial 371-4200 12 Pages

YOUNT IS GUILTY; GIVEN LIFE TER[M]

DEFENSE MAY SEEK NEW TRIAL FOR CON-  
VICTED SLAYER

CLEARFIELD, Pa. (AP)—Defense attorney  
Homer King says he will decide in the next several  
days whether to move for a new trial for Jon E.  
Yount, sentenced to life imprisonment Friday for  
murder and rape.

King said he would review the trial before  
deciding what further defense action to take. He has  
several days to file an appeal.

Yount, 28, was convicted Friday in the death of  
Pamela Sue Rimer, 18, a student at DuBois High  
School, where he was a mathematics teacher.

The Clearfield County jury of seven women and  
five men returned its verdict about an hour after it  
had begun deliberations.

Yount, who is to go to Western State Peniten-  
tiary, was returned temporarily to Clearfield County  
jail.

A crowd of several hundred persons lingered outside the old red courthouse to await the verdict. They mingled with the Friday night shopping crowd as Yount was placed in a car and driven to jail.

Before leaving the courthouse, Yount was permitted to talk briefly with his wife, parents and sister in the courthouse anteroom.

Yount leaned on a counsel table with one hand and let his head sag in the palm of the other hand when the jury brought back its verdict.

After hearing more testimony and statements by attorneys for the commonwealth and for the defense, the jurors again retired, this time to determine whether to give Yount life imprisonment or death. They were back in a half hour with their decision.

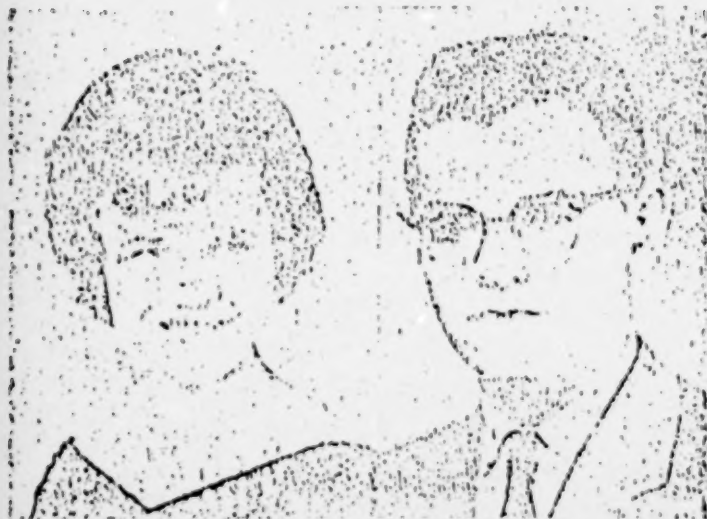
Judge John A. Cherry, who presided at the trial, which lasted almost two weeks, delivered a four-hour-long charge to the jury.

The defense contended Yount was temporarily insane the day Miss Rimer was killed.

The state contended that Yount, a father of two, made an improper remark to the girl, she became agitated, and Yount panicked and killed her.

Her body was found in a wooded area near her Luthersburgh R.D. 3 home. She was beaten and stabbed.

## SPARED DEATH IN QUICK VERDICT



Jon Yount, former DuBois Area High School math teacher was sentenced to life imprisonment late Friday afternoon by a Clearfield County Jury for the brutal rape-murder of one of his students last April 28—Pamela Sue Rimer, 18, of Brady township. Pamela Sue was an honor student at D.H.S. and was due to graduate with her classmates within a month after her death.

### DEFENDANT TAKEN TO PITTSBURGH FOR IMPRISONMENT TERM

By **GEORGE WAYLONIS**  
Managing Editor

A fellow with a red and black checkered shirt and a bright orange cap leaned out the window of his car at the corner of E. Second and Market St. as twilight shrouded Clearfield yesterday.

A purple haze enveloped the courthouse.

"Hey, what's going on?" he queried a by-stander.

"The Yount trial is over," a teener-boy exclaimed.

"Oh..." said the hunter, probably a bow-and-arrow nimrod heading to his hunting lodge for the weekend.

Minutes later, the sidedoor opened. A state police phalanx emerged. Jon E. Yount was in the middle. They headed to a car 15 feet away.

As the crowd of more than 300, restrained by police, surged forward, the Sheriff's Car sped away.

And within hours, Jon E. Yount was heading to the State Correctional Institution at Pittsburgh.

He is there today, being processed and ready for classification, and then to a penal institution. His life has been spared by a jury of seven women and five men.

At 6:30 p.m. he had been sentenced by Judge John A. Cherry to life imprisonment, minutes after having been found guilty of murder in the first degree and the rape of Pamela Sue Rimer, a Luthersburg honor student in his advanced mathematics class at DuBois Area high school.

His attorneys have four days in which to file motions or to seek a new trial. It is believed they will file motions.

Before whisked away he bid farewell to his family in an anteroom. Present were his parents Mr. and Mrs. Elveen Yount, his sister Jane, of Sabula; his wife, Ruth, and another person.

After 3 p.m. yesterday, events began to move rapidly. The jury had first left the courtroom at 1:23 p.m. after hearing a three and half hour charge by Judge Cherry.

Lunch was awaiting them in the jury room. And shortly after 2 p.m., their deliberations began ... the climax to the trial which had lasted two weeks.

At 3 p.m. the jury was reassembled in the courtroom and Judge Cherry again defined the various verdicts possible and to answer four questions asked by the jurors: They were:

1.) Is a written list of exhibits (evidence) available? This was defined because the list is used only for the convenience of the court. 2.) wanted a written list of possible verdicts (this was denied. 3.) photographs showing the wounds on the victim and a photograph of the defendant (they were supplied with the stipulation they be returned after serving their purpose. 4.) definition of the crimes (Judge Cherry again listed the various verdicts possible).

At 4:30, Court Matron Shirley Bigney, of DuBois, heard the knock. The jury was ready. Court Crier Louis Hudsik was summoned and court was convened. There were only seven persons in the room. In addition to three women with Mrs. Douglas Rimer, mother of the victim, Jane Yount and a close family friend, Mrs. June Carmella. The other members of the Yount family were summoned. Court was in session again ... at 4:40 p.m.

Mac Weaver, of DuBois, the jury foreman, announced they had a verdict. It was delivered by Clerk of Courts Archie Hill to the judge.

After reading it, he summoned the attorneys and explained that the verdict was incomplete. It probably read: "Guilty as charged."

At 4:31, *got there figures messed up again* — Judge Cherry instructed the jurors to return to their deliberations and determine the degree of guilt.

Less than three minutes after filing into their room, the knock from the jury room was heard again. They were filing back in the court room at 4:40.

Jon E. Yount was ordered to rise and face the jury.

The courthouse clock was tolling 5 p.m. as Foreman Weaver read the verdict: "guilty of murder and rape in the first degree."

There were about 35 persons in the courtroom. The 25-year-old wife of the defendant began sobbing. She was aided to a side room by Trooper John George as Defense Attorney Homer King asked that each juror be polled. Each was.

For the first time during the trial, the shoulders of the muscular Jon Yount sagged, but he remained calm. Mrs. Rimer was weeping in a seat in the far corner of the room.

This meant that more testimony would be presented in order to better orient the jurors who now had to fix the penalty.

Both counsels decided against further testimony. They had no more evidence or witnesses. Each then addressed the jury for about 5 minutes.



In his address, District Attorney John K. Reilly said the supreme penalty should be evoked only rarely but this he said was one time it should be evoked because an 18-year-old girl was murdered and raped. He spoke softly without persuasion.

In his plea, Attorney King said the trial had dissected the life and soul of Jon E. Yount, to show the causes of what made him do what he did. What's to be accomplished by your next decision, he asked? The defendant had lived an exemplary life. "This is something that I wish you'd consider at this time. I wish we could bring Pam back

See DEFENDANT, Page 2

Defendant

and take his life. But you can accomplish nothing further by taking his. He is not mean, ugly or a bad disposition." The doctors told how these things happen. They said this is treatable. He crossed the barrier ... the real from the unreal ... By sparing him, you may allow him to atone for his actions."

And as he asked for mercy, Homer King was again sobbing before the jury.

The fixing of the penalty took only 15 minutes. They reached the verdict at 6:12 p.m., and court was convened four minutes later. Yount rested his head in the palm of his left hand.

In a clear, but soft voice, Foreman Mac Weaver read: "Life imprisonment." That was 6:21 p.m.

As Attorney King conferred with the Yount family, Judge Cherry expressed the appreciation of the court for the manner in which the jurors carried out

their duties. "These duties," he said, "are not simple; they are difficult ..." The jurors were excused.

The sentence had been imposed. It called for separate and solitary confinement and "treatment by the Commission."

During the charge, Judge Cherry explained the law and reviewed the testimony.

Conflict in testimony, he said, had to be resolved by the jurors. Phrases like "I think I'm the man..." or "I am the man," or "I killed that girl" or "I think I killed that girl."

And he pointed out the difference in the testimony of the pathologists. The Pittsburgh pathologist could only testify to Dr. John Ungar's report while Dr. Ungar, in his oral testimony, told of forgetting to dictate the thigh wounds into the report; and that he had photographs taken of those wounds, which he felt, would better explain the wounds.

Court house observers had never in contemporary history seen such a large crowd to watch the departure of a convicted man from the courthouse.

After the verdict, Mrs. Rimer said she had nothing to say.

Onlookers at Market and Second drifted on ... janitors began their work in the courthouse ... state troopers, court personnel, friends and loved ones melted into the darkness of their waiting cars.

What had happened along the red dog road near Luthersburg last April was now judicial record.

EXHIBIT P-1-s

---

XIV *How bout these head-lines? & our dear local pathologist wouldn't handle the case—but as usual Waylonis comes up with some pretty nice excuses for Dr. Ungar.*

THE COURIER-EXPRESS

87-No. 238 Serving Clearfield, Elk and Jefferson Counties DuBois, PA., 15801, Monday, October 10, 1966

Dial 371-4200 16 Pages

MORE DETAILS OF YOUNT JURY DELIBERATIONS

Jurors for the Jon E. Yount trial reached their verdict rather quickly.

The Courier-Express learned that in the early stages of the deliberation, four of the jurors were holding out for the supreme penalty; and another was urging the legal insanity verdict.

It was during this instance during deliberations that the jurors sought the list of possible verdicts. This was refused because it is not court procedure to provide a written list of verdicts. The jurors had wanted the list to better acquaint themselves and to visually see the list of possible verdicts.

A number of exhibits were displayed in the jury room for use by the jury if it so desired, but the Courier-Express learned that

See MORE DETAILS, Page 2

## More Details

only a few items were handled. These items included the death certificate, as issued by the county coroner; and the undergarments of the victim and the defendant. The jurors had requested and received photographs of both, but these were returned to the court after they had been examined.

---

EXHIBIT P-1-t

---

[Y]OUNT FILES MOTION FOR NEW TRIAL  
THE COURIER-EXPRESS

No. 239 Serving Clearfield, Elk and Jefferson Counties  
DuBois, PA., 15801, Tuesday, October 11, 1966

Dial 371-4200 16 Pages

## CHARGES JUDGE'S ERRORS

CLEARFIELD, Pa (AP)—Jon E. Yount, convicted of first degree murder and rape and sentenced to life imprisonment, has asked for a new trial and an arrest of judgment.

Motions were filed Monday in Clearfield County Court by Yount's attorney, Homer W. King of Pittsburgh.

Yount, 28, a former DuBois Area High School teacher, was convicted Friday in the death of a pupil, Pamela Sue Rimer, 18, of Luthersburg R.D. 3.

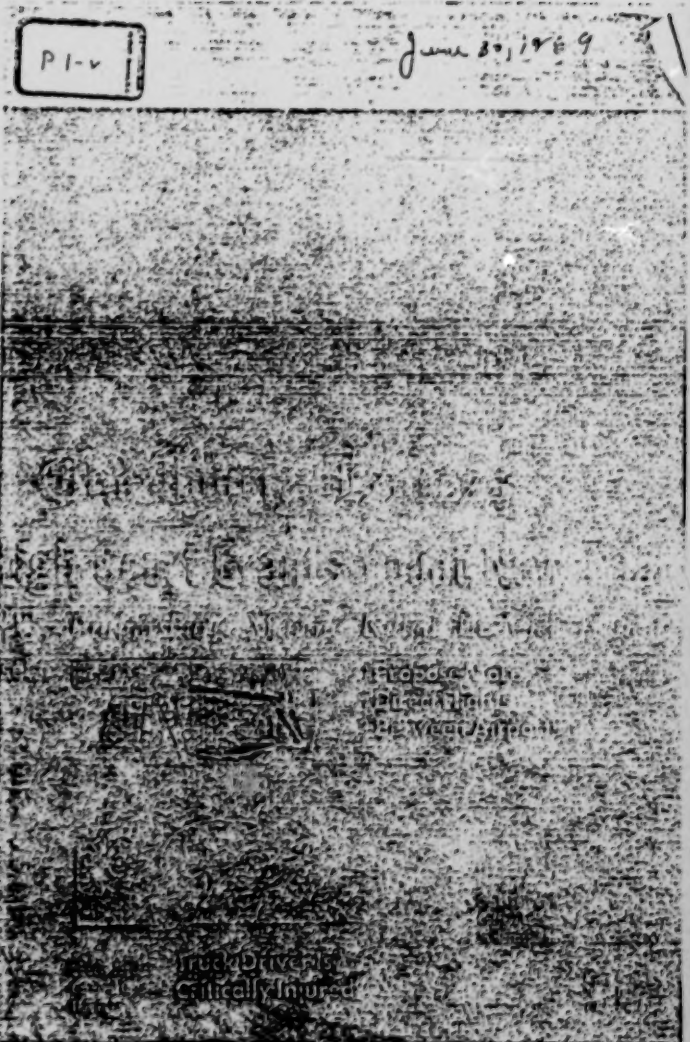
The motion for a new trial was based mainly on alleged errors by Judge John A. Cherry.

The defense said the judge erred in his instructions to the jury; improperly allowed certain Commonwealth exhibits into evidence; improperly allowed the jury to view certain exhibits during deliberation; refused to grant the defendant's motion to withdraw the jury when certain motions were made during trial; allowed into evidence the defendant's statements and confessions which the defense claims were given involuntary and without benefit of counsel.

Yount also reserved the right to file additional reasons for a new trial and arrest of judgment after the testimony has been transcribed. The transcription is expected to take several months.

642a

Exhibit P-1-v



Best Copy Available

EXHIBIT P-1-w

---

July 1 '69

JUDGE CHERRY AWAITS COPIES OF YOUNT  
DECISION

Clearfield County Judge John Cherry is awaiting copies of the State Supreme Court decision which orders a new trial for Jon E. Yount, a DuBois Area High School teacher now serving life imprisonment for first degree murder and rape of a pupil, 18 year old Pamela Sue Rimer of Luthersburg, R. D. 1.

The State Supreme Court's decision was handed down last Friday by Justice Samuel J. Roberts.

Reversing the decision of Judge Cherry, who turned down an appeal for a new trial, the State Supreme Court based its finding on the Miranda case that Yount failed to receive all of the warnings of his right to counsel. The Commonwealth concluded Yount was not told of his right to free counsel, if he could not afford his own attorney.

The supreme court's decision reversed the county court's conviction and sentence and ordered a new trial.

Yount surrendered at the state police station at DuBois April 29, 1966, the morning following the murder.

